CONGRESS, Session. | HOUSE OF REPRESENTATIVES. | REPORT No. 544.

H. SNOWDEN MARSHALL.

APRIL 14, 1916.—Referred to the House Calendar and ordered to the printed.

Mr. MOON, from the select committee appointed pursuant to H. Res. 193, submitted the following

REPORT.

The select committee of the House of Representatives was appointed under House resolution 193, which is as follows:

[H. Res. 193, Sixty-fourth Congress, first session.]

Resolved, That a select committee of five members be appointed forthwith by the Speaker to consider the report, in the nature of a statement, from the Judiciary Committee with reference to certain conduct of H. Snowden Marshall, and to report to the House of Representatives the facts in the case; the violations, if any, of the privileges of the House of Representatives or of the Committee on the Judiciary, or of the subcommittee thereof; the power of the House to punish for contempt; and the procedure in contempt proceedings, in case they find a contempt has been committed, to the end that the privileges of the House shall be maintained and the rights of Members protected in the performance of their official duties.

The select committee shall have the power to send for persons and papers and shall submit its report to the House not later than April fourteenth, nineteen hundred and sixteen.

The report upon which this resolution was predicated and to which it refers is as follows:

[House Report No. 494, Sixty-fourth Congress, first session.]

ALLEGED OFFICIAL MISCONDUCT OF H. SNOWDEN MARSHALL.

[April 5, 1916.—Ordered to be printed.]

Mr. Webb, from the Committee on the Judiciary, submitted the following report (to accompany H. Res. 193):

By direction of the Committee on the Judiciary, I beg leave to make the following report, in the nature of a statement, to the House of Representatives. On the 12th day of January, 1916, Hon. Frank Buchanan, a Representative in Congress from the State of Illinois, arose, in his responsible position, on the floor of the House and impeached H. Snowden Marshall, district attorney for the southern district of the State of New York, charging the said H. Snowden Marshall with numerous malfeasances and misfeasances and with corrupt and improper behavior and conduct in office. Immediately after the reading of said charges Representative Buchanan offered, for the immediate consideration of the House, resolution 90, which provided, among other things, "that

the Committee on the Judiciary be directed to inquire and report whether the action of this House is necessary concerning the alleged official misconduct of H. Snowden Marshall," etc. After debate on the resolution the House, upon motion of Mr. Fitzgerald, of New York, referred the resolution to the Committee on the Judiciary for its consideration and action.

The Committee on the Judiciary immediately began the consideration of said resolution and called Representative Buchanan before it to make such statement and furnish such information concerning the truth of his impeachment charges, as set out in House resolution 90, as he was able to make and furnish. Thereafter, on the 27th day of January, 1916, by direction of the Judiciary Committee, the chairman thereof offered in the House of Representatives the following resolution:

[House resolution 110.]

"*Resolved*, That the Committee on the Judiciary in continuing their consideration of House resolution 90 be authorized and empowered to send for persons and papers, to subpœna witnesses, to administer oaths to such witnesses, and take their testimony.

"The said committee is also authorized to appoint a subcommittee to act for and on behalf of the whole committee wherever it may be deemed advisable to take testimony for said committee. In case such subcommittee is appointed, it shall have the same powers in respect to obtaining testimony as are herein given to the Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall attend the sittings of such subcommittee and serve the process of same.

"In case the Committee on the Judiciary or a subcommittee thereof deems it necessary it may employ such clerks and stenographers as are required to carry out the authority given in this resolution, and the expenses so incurred shall be paid out of the contingent fund of the House.

"The Speaker of the House of Representatives shall have authority to sign, and the Clerk thereof to attest, subpœnas for witnesses, and the Sergeant at Arms or a deputy shall serve them."

The said resolution was on said date unanimously agreed to.

While further considering the said House resolution 90 and the said House resolution 110, on the 31st day of January, 1916, the Committee on the Judiciary authorized the chairman to appoint a subcommittee of three to execute the purposes of House resolution 110 to act for and on behalf of the full committee wherever it may be deemed advisable to take testimony for said committee, and on February 1, 1916, the chairman appointed Messrs. Charles C. Carlin, Warren Gard, and John M. Nelson as members of such subcommittee.

Thereafter the said subcommittee organized and heard the testimony of certain witnesses in the Judiciary Committee rooms in the city of Washington. The subcommittee determined, for its further information and in carrying out the duties assigned it under the resolution of the House of Representatives, that it should hear the testimony of certain other witnesses in the city of New York, and on the 28th day of February, 1916, the said subcommittee, under subpœnas duly signed by the Speaker of the House of Representatives and attested by the Clerk thereof, caused certain witnesses to be brought before it, in the Federal post-office building in the city of New York, and continued the examination of witnesses upon said charges up to and including the 4th day of March, 1916.

On the 3d day of March, 1916, there appeared in a New York newspaper an article containing, among other things, the following language:

"It is the belief in the district attorney's office that the real aim of the Congress investigation is to put a stop to the criminal investigation of the pro-German partisans."

On the 3d of March, 1916, the subcommittee called before it one Leonard R. Holme, who testified to the subcommittee that he wrote the article containing the foregoing language, but when asked whether or not he conferred with anybody in the district attorney's office before the article was written replied that he declined to give the source of his information. The chairman of the subcommittee then propounded this question to the witness: "Did you confer with Mr. Marshall before you wrote this article?" To which the witness replied, "I respectfully decline to answer the question, sir." The chairman of the subcommittee then propounded the following question to him: "Did you confer with anybody in Mr. Marshall's office?" To which the witness replied, "I respectfully decline to answer that question, sir."

Whereupon, the Sergeant at Arms was directed by the chairman of the subcommittee to take charge of the witness and keep him in custody until the further order of the committee. At 4.10 o'clock p. m. of the same day, the chairman of the subcommittee again propounded the foregoing questions to Witness Holme, and the following proceedings were had:

"Mr. CARLIN. Mr. Holme, the committee has directed me to order you to answer the question which was asked you. Mr. Stenographer, read the testimony of Mr. Holme.

"(The entire previous testimony of Mr. Holme was read to the committee by the stenographer in the hearing of the committee only.)

"Mr. CARLIN. Mr. Holme, I hand you this article in the sixth column of page 4 of the New York Times, dated Friday, March 3, 1916. The article is headed 'Marshall refuses Buchanan evidence.' I now call your attention to this paragraph of the article:

"'It is the belief in the district attorney's office that the real aim of the Congress investigation is to put a stop to the criminal investigation of the pro-German partisans.'

"I ask you from whom you got that information?

"Mr. HOLME. That information, sir, is a deduction. I have known at the time these proceedings were begun in Washington, it was before the indictment of Congressman Buchanan, that there had been a considerable amount of talk around this building as to their nature. I am down here practically every day of my life, and I meet with a great many men who are connected with the district attorney's office and who are in this building in various other regular capacities, and I based that paragraph entirely upon my knowledge of the general gossip around the building and the general feeling in the building.

"Mr. CARLIN. Why did you not state that, instead of saying it is the belief in the district attorney's office?

"Mr. HOLME. Well, sir, it comes to much the same thing, does it not? The district attorney's office is a large organization.

"Mr. CARLIN. Is that your answer?

"Mr. HOLME. Yes, sir.

"Mr. CARLIN. Did you base that part of the article upon a conference held with H. Snowden Marshall or any subordinate of his in the district attorney's office?

"Mr. HOLME. I based that article on my general knowledge of the conditions surrounding this proceeding and the general opinion floating around the building.

"Mr. CARLIN. You state that it is the general belief in the district attorney's office. Now, who in the district attorney's office expressed that belief?

"Mr. HOLME. I don't think I could give you any definite names, because I have discussed this matter with a large number of different people at various times.

"Mr. CARLIN. As a matter of fact, did anybody in the district attorney's office express that belief?

"Mr. HOLME. Yes, sir.

"Mr. CARLIN. Who?

"Mr. HOLME. I can only remember a very few, and I respectfully decline, as a newspaper man, to express their opinions, which are often given to me in general conversation.

"Mr. CARLIN. Was the belief expressed by Mr. Marshall or either of his assistants?

"Mr. HOLME. I respectfully decline to answer, sir.

"Mr. CARLIN. Mr. Stenographer, insert in the record this article which I hand you, and the date line of the paper.

"Mr. GARD. I understand you to say, Mr. Holme, that this extract which has been read to you was written by you?

"Mr. HOLME. Yes, sir.

"Mr. GARD. And the extract is this:

"'It is the belief of the district attorney's office that the real aim of the congressional investigation is to put a stop to the criminal investigation of the pro-German partisans.'

"You wrote that?

"Mr. HOLME. Yes, sir.

"Mr. GARD. And I understand also that you decline and refuse to answer questions as to whether you obtained that information from anyone in the district attorney's office of the southern district of New York?

"Mr. HOLME. Yes, sir.

"Mr. GARD. You decline to answer that?

"Mr. HOLME. Yes, sir.

"Mr. CARLIN. Now, then, Mr. Holme, I am directed by the committee to order you to answer that. Do you still decline?

"Mr. HOLME. I do, respectfully, sir.

"Mr. CARLIN. Then, I am directed to say to you, for the record, that this committee determines you to be in contempt of the order of the committee and of the House of Representatives of the Congress of the United States, and that for the present you will be released from the custody of the marshal until the committee, if it sees proper, shall proceed in the manner prescribed by statute in such cases. We want to be kind to you. We have no desire to be harsh with you. We realize to some extent your embarrassment. We have a duty to discharge, and we think under the circumstances we will discharge it in this way and release you from the custody of the Sergeant at Arms of the House."

On Saturday, the 4th day of March, 1916, the said H. Snowden Marshall, as district attorney for the southern district of New York, caused to be transmitted to C. C. Carlin, chairman of said subcommittee, then in the performance of its duties, as required by the House of Representatives, the following letter:

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, March 4, 1916.

SIR: Yesterday afternoon, as I am informed, your honorable committee ordered the arrest of Mr. L. R. Holme, a representative of a newspaper which had published an article at which you took offense. The unfortunate gentleman of the press was placed in custody under your orders. He was taken to the United States marshal to be placed in confinement (I do not understand whether his sentence was to be one day or a dozen years). The marshal very properly declined to receive the prisoner. This left you at a loss, and I am advised that you tried to work your way out of the awkward situation by having Mr. Holme brought back and telling him that you were disposed to be "kind" to him and then discharged him for the purpose of avoiding unpleasant consequences to yourselves.

You are exploiting charges against me of oppressive conduct toward a member of your honorable body who is charged with a violation of law and of oppressive conduct on my part toward shysters in the blackmailing and bankruptcy business.

I may be able to lighten your labors by offering to resign if you can indicate anything I ever did that remotely approximates the lawless tyranny of your order of arrest of Mr. Holme.

The supposed justification of your order that Mr. Holme be placed in custody was his refusal to answer the question you asked as to where he got the information on which was based the article which displeased you.

It is not necessary for you to place anyone under arrest in order to get the answers to the question which you asked Mr. Holme, because I can and will answer it. I gave Mr. Holme information, part of which he published and from which he made deductions, so that if your honorable committee has a grievance it is against me and not against him.

What I told him was about as follows:

I said that your expedition to this town was not an investigation conducted in good faith, but was a deliberate effort to intimidate any district attorney who had the temerity to present charges against one of your honorable body.

I said that your whole proceeding here was irregular and extraordinary; that I had never heard of such conduct of an impeachment proceeding; that charges of this sort were not usually heard in public until the House of Representatives had considered them and were willing to stand back of them.

I pointed out to him that you, contrary to usual practice, had come here and had held public hearings; that among your witnesses you had invited every rogue that you could lay your hands on to come before you and blackguard and slander me and my assistants under the full privilege of testifying before a congressional committee.

I told him that you had called one of my junior assistants before you and had attempted to make it publicly appear that his refusal to answer your questions as to what occurred in the grand jury room in the Buchanan case was due solely to my orders. I said that at the time you attempted to convey this public impression you knew that it was misleading because I had been asked

by you to produce the minutes of the grand jury and had been instructed by the Attorney General not to comply with your request, as you well knew. I showed him the telegram of the Attorney General to me and showed him a copy of my letter to you, dated February 29, 1916, in which I sent you a copy of the telegram of the Attorney General instructing me not to give you the grand jury minutes.

I told him that you were traveling around in your alleged investigation of me with Buchanan's counsel, Walsh and David Slade, in constant conference with you. I said that I believed that every word of the evidence, whether in so-called secret sessions or not, had been placed at the disposal of these worthies, and that I would be just as willing to give the grand jury minutes to a defendant as to give them to your honorable subcommittee.

I told him that I did not share the views which seemed to prevail in your subcommittee on this subject. I said that I regarded a Member of Congress who would take money for an unlawful purpose from any foreign agent as a traitor, and that it was a great pity that such a person could only be indicted under the Sherman law, which carries only one year in jail as punishment.

I said that it was incomprehensible to me how your honorable subcommittee should rush to the assistance of an indicted defendant; how you had apparently resolved to prevent prosecution by causing the district attorney in charge to be publicly slandered.

I told him that I would not permit the prosecution of the persons whose cause you had apparently espoused to be impeded by you; I said that if you wanted the minutes of the grand jury in any case, you would not get them as long as I remained in office. You will observe from the foregoing statement that what Mr. Holme published may have been based on what I said. If you have any quarrel, it is with me, and not with him.

It is amazing to me to think that you supposed that I did not understand what you have been attempting to do during your visit here. I realized that your effort was to ruin me and my office by publishing with your full approval the complaints of various persons who have run afoul of the criminal law under my administration. Your subcommittee has endeavored by insulting questions to my assistants and others, by giving publicity and countenance to the charges of rascals and by refusing to listen to the truth and refusing to examine public records to which your attention was directed, to publicly disgrace me and my office.

I propose to make this letter public.

Respectfully,

H. SNOWDEN MARSHALL,
United States Attorney.

Hon. C. C. CARLIN,
Chairman Subcommittee of the Judiciary Committee
of the House of Representatives,
323 Federal Building, New York, N. Y.

At the same time or before this letter was sent to the subcommittee it was given to the newspapers and published by them.

On the 9th day of March, 1916, the subcommittee aforesaid, through its chairman, Hon. C. C. Carlin, submitted to the Committee on the Judiciary the foregoing letter of H. Snowden Marshall.

On or about the 11th day of March, 1916, the following letter was received by the chairman of the Judiciary Committee and immediately laid before the full committee:

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, March 10, 1916.

DEAR SIR: Referring to my letter of March 4, addressed to the chairman of the subcommittee which has recently taken testimony in New York concerning my administration of my office, I notice from the press that some persons appear to have construed by statements as directed toward your honorable committee as a whole. I beg to advise you that the criticisms in that letter were addressed to the methods pursued by the subcommittee. I do not retract nor modify any of those criticisms. But I did not intend (nor do I think my letter should be so construed) to reflect in any way upon the Judiciary Committee, nor did I question the power of the House of Representatives to order such an investigation.

If you and the other members of your committee, for whom I have high respect, have gained the impression that my letter carried any personal reflection upon your honorable committee, it gives me pleasure to assure you that I had no such purpose.

Respectfully,

H. SNOWDEN MARSHALL.

Hon. EDWIN Y. WEBB,
Chairman of the Judiciary Committee,
House of Representatives, Washington, D. C.

The Judiciary Committee has carefully considered said letters in the light of congressional and judicial precedents as touching the prerogatives of the House of Representatives and its Members, and the committee has come to the determination that said letters, their publication and attendant circumstances, are of such nature that they should be called to the attention of the House. For obvious reasons the committee deems it advisable to take this step rather than to report directly upon the facts and the law in the case. I am, therefore, directed by the committee to report the whole matter to the House of Representatives with the recommendation that a select committee of five be appointed by the Speaker to report upon the facts in this case; the violations, if any, of the privileges of the House or the Committee on the Judiciary or the subcommittee thereof; the power of the House to punish for contempt; and the procedure in contempt proceedings, to the end that the privileges of the House shall be maintained and the rights of the Members protected in the performance of their official duties.

The select committee appointed under House resolution 193 met for the hearing on Friday, April 7, 1916, at 10 a. m., and took the testimony of Representatives Webb, Gard, Nelson, and Carlin and directed the chairman to send the following letter to Hon. H. Snowden Marshall, of New York, and then adjourned to 10 a. m., Monday, April 10, 1916:

APRIL 7, 1916.

Hon. H. SNOWDEN MARSHALL,
United States District Attorney for the
Southern District of New York, New York City.

DEAR SIR: Inclosed is H. Res. 193 and Report No. 494, which explain themselves. The select committee appointed by the Speaker of the House of Representatives are now engaged in the investigation of the matters referred to herein. We will be glad to have you appear before us, if you so desire, at the rooms of the Committee on the Post Office and Post Roads of the House of Representatives, in the Capitol Building, Washington, D. C., on Monday, April 10, 1916, at 10 o'clock a. m., and make such statement as you may desire before the committee touching this matter. As the time of the committee is limited in which to report, you will oblige us by advising by wire whether you desire to be present or not. This communication is made to you by order of the select committee.

Very truly, yours,

JOHN A. MOON,
Chairman Select Committee.

This letter was mailed to Mr. Marshall on the 7th of April, 1916. On April 8, 1916, the following reply was received by wire:

NEW YORK, N. Y., *April 8, 1916.*

Hon. JOHN A. MOON,
Washington, D. C.:

Your letter received. It will give me pleasure to appear before your committee at the time and place mentioned in your letter.

H. SNOWDEN MARSHALL.

The committee met again at 10 a. m., April 10, 1916, pursuant to adjournment, when Mr. Marshall appeared and was given a steno-

graphic copy of the statements of witnesses who had testified in the case, and was advised that he would be given an opportunity before making his statement to read the same and cross-examine the witnesses. Thereupon the committee adjourned to 1.30 p. m., April 10, 1916, this being deemed sufficient time by Mr. Marshall in which to examine the statements of the witnesses.

The select committee met again at 1.30 p. m., April 10, 1916. Mr. Marshall appeared and made a statement in writing and testified orally. He also subsequently submitted an additional statement on April 12, 1916, and some newspaper clippings. The statements and testimony of all the witnesses who appeared before the select committee are attached hereto as an appendix to this report. The newspaper clippings are not strictly relevant, but are filed. There was also filed as evidence for reference the hearings in the case of charges against H. Snowden Marshall, taken by a subcommittee of the Committee on the Judiciary in New York on February 28, 1916, and following. These hearings are material mainly in determining whether the subcommittee making the investigation was acting within the scope of its authority.

FINDING OF FACTS.

1. H. Snowden Marshall is and has been for several years past United States district attorney for the southern district of New York.

2. On the 28th day of December, 1915, the grand jury in the United States District Court for the Southern District of New York found an indictment against a Member of the House, Hon. Frank Buchanan, and others, for the violation of a Federal Statute. (We have not been furnished with a copy of this indictment and therefore can not incorporate it in this report.)

3. On December 14, 1915, preceding the finding of the indictment Hon. Frank Buchanan, a Representative in Congress from the State of Illinois, impeached H. Snowden Marshall, the United States district attorney for the southern district of New York, of malfeasance and misfeasance in office. On January 12, 1916, said Representative Buchanan again presented to the House charges and impeached the said H. Snowden Marshall, United States district attorney for the southern district of New York, as follows:

IMPEACHMENT OF H. SNOWDEN MARSHALL.

The SPEAKER. The gentleman from Illinois [Mr. Buchanan] is recognized.

Mr. BUCHANAN of Illinois. Mr. Speaker, I rise to a question of the highest privilege. By virtue of my office as a Member of the House of Representatives I impeach H. Snowden Marshall, United States district attorney for the southern district of New York, of high crimes and misdemeanors.

I charge him with having conspired with persons, firms, and corporations, their agents and servants, to grant such persons, firms and corporations the privilege of violating various criminal, neutrality, interstate commerce, or custom laws of the United States in the southern district of New York.

I charge him with securing for persons or corporations great financial profit in consequence of the violation of the United States laws.

I charge him with corruptly and collusively participating in such conspiracies.

I charge him with corruptly neglecting and refusing to prosecute gross and notorious violations of various criminal, neutrality, custom revenue, and antitrust laws of the United States within said judicial district.

I charge him with corruptly inducing and procuring grand juries to return into the district court for the southern district of New York of indictments

charging crimes without there being evidence before said grand jury which would in any degree justify the finding and filing of such indictments.

I charge him with being guilty of oppression in corruptly procuring indictments from the grand jury in said district charging reputable citizens with crime, although there was no evidence before the grand jury which would in the least warrant such charges.

I charge him with corruptly conspiring with other persons to spread broadcast throughout the United States maliciously false newspaper publications and reports, emanating as official statements and purporting to describe results of investigations conducted by said United States attorney and his assistants, with the object of destroying friendly relations between the United States and one or more foreign governments.

I charge him with unlawfully and feloniously abusing the legal process before the grand jury in said district of New York, the Secret Service, and the Bureau of Investigation and Inquiry of the Department of Justice in furtherance of such conspiracy aforesaid.

I charge him with having knowledge of the existence of circumstances from which knowledge is imputed to him that large sums of money have been expended for or on behalf of foreign Governments and of various purveyors and manufacturers of war munitions for the purpose of influencing the actions of said United States attorney in furtherance of a conspiracy.

I charge him with having corruptly neglected or refused to prosecute men who have made the port of New York, within said judicial district, a military or naval base for foreign belligerent powers.

I charge him with corruptly neglecting and refusing to prosecute violations of Federal statutes prohibiting the loading and shipment of explosives on ships carrying passengers within said judicial district.

I charge him with corruptly neglecting and refusing to prosecute violations of the foreign-enlistment act and laws of the United States within said district.

I charge him with having corruptly used the powers of his office for the purpose of slandering and libeling peaceable and law-abiding people to their great injury.

I charge him with having abetted, approved, acquiesced, and permitted unlawful and oppressive misuse of subpœnas and other process before grand juries in said southern district of New York.

I charge him with having deprived law-abiding citizens of their legal rights, privileges and immunities.

I charge him with aiding, abetting, and approving unlawful expenditures of public moneys in violation of the laws of the United States.

I charge him with being guilty of attempts by private solicitation of influencing the official actions and opinions of judges in the southern district of New York while in the performance of their judicial duties.

I charge him with having used the powers of his office to cause and procure a discrimination in the assignment of judges to conduct trials in said district, so as to discriminate against one or more resident judges.

I charge him with having used the powers of his office to procure or assist in the procurement of judges to be imported into the southern district of New York from other districts for the trial of cases in said district by falsely representing the condition of judicial business within said district.

I charge him with being guilty of private solicitation with intent to influence the official acts and decisions of judges imported as aforesaid.

I charge him with having attempted to corruptly control decisions and official actions of one or more of such imported judges.

I charge him with having procured the assignment of one or more imported judges for the conduct of trials in the said district for the purpose of preventing defendants in such cases from receiving a fair and impartial trial at the hands of resident judges.

I charge him with being a party to a conspiracy participated in by his assistant district attorneys and other officials connected with the administration of justice in the said southern district of New York, for the purpose of unlawfully manipulating and controlling the selection of grand and petit jurors in connection with cases in the courts of said district.

I charge him with having been guilty of acts by which the rights of the United States and that of individuals have been unlawfully prejudiced and the orderly and fair administration of justice defeated or obstructed in one or more instances.

I charge him with having employed the powers of his office for the purpose of shielding and to prevent the exposure of unlawful and improper conduct of

one James W. Osborne in relation to facts involved in civil litigation which was pending in the State court in the State of New York.

I charge him with unlawfully protecting the said Osborne and others from prosecution for the violation of United States laws.

I charge him with willfully and corruptly refusing and neglecting to prosecute gross and notorious violations of the United States statutes committed by said James W. Osborne and others in the city and State of New York within said district.

I charge him with having prostituted the office of United States district attorney for the southern district of New York.

I charge him with having used the powers of his said office as United States district attorney to corruptly and willfully defame, slander, and injure the good name and professional standing of law-abiding citizens of the United States, to their great injury, for the purpose of protecting the private individual interests of James W. Osborne.

I charge him with having corruptly failed, neglected, and refused to prosecute persons who, while acting as witnesses for the United States in the trial of causes, committed the crime of perjury, subornation of perjury, and conspiracy in connection with the cases of United States against Rae Tanzer, United States against Frank D. Safford, and United States against Albert J. McCullough et al.

I charge him with having used and employed the United States grand jury in the southern district of New York for the purpose of attempting to establish records which might be used in defense of James W. Osborne, H. Snowden Marshall, Roger B. Wood, and Samuel H. Hershenstein (the last two being assistant United States district attorneys under said H. Snowden Marshall), and not for the purpose of investigation of violations of the United States laws.

I charge him with corruptly and willfully failing to remove certain of his assistant district attorneys who destroyed documentary evidence material in the trial of a pending case in the United States district court for the southern district of New York.

I charge him with corruptly and maliciously causing to be instituted criminal proceedings against Rae Tanzer and others for the purpose of protecting James W. Osborne, a special United States district attorney and a personal intimate friend of said H. Snowden Marshall.

I charge him with corruptly and willfully failing and refusing to present to the court the trial of cases material and important evidence and in concealing or assisting and acquiescing in the concealment or destruction of material and important evidence relating to pending cases in the United States district court for the southern district of New York.

I charge him with being corrupt, grossly negligent, and unfit to retain the office as United States district attorney for the southern district of New York.

I charge him with having willfully and persistently violated the laws of the United States in connection with the performance by him of the duties of such United States district attorney for said southern district of New York.

I charge him with having corruptly and willfully withheld and failed to present before the grand jury material and important evidence in connection with alleged investigations instituted before said grand jury by said H. Snowden Marshall in relation to the cases of United States against Rae Tanzer and United States against Albert J. McCullough et al., and others.

I charge him with having corruptly and willfully refused and neglected to take cognizance of unlawful conduct of his assistant district attorneys in connection with the performance by them of official duties as such assistant district attorneys.

I charge him with corruptly participating in or acquiescing to the presentation to the court in trial of cases in the southern district of New York of alleged evidence which he knew to be untrue and manufactured, or in the manufacture of and attempt to manufacture such alleged evidence.

I charge him with producing willful injury and wrong to litigants in said district court and to citizens of the United States by his unlawful and improper conduct.

Mr. Speaker, I send up the following resolution to the desk to be read by the Clerk.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

"*Resolved*, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is necessary concerning the alleged official misconduct of H. Snowden Marshall; whether he has conspired with

persons, firms, and corporations, their agents and servants, to grant such persons, firms, and corporations the privilege of violating various criminal, neutrality, interstate-commerce, or custom laws of the United States in the southern district of New York; whether he has secured for persons or corporations great financial profit in consequence of the violation of the United States laws; whether he has corruptly and collusively participated in such conspiracies; whether he has corruptly neglected and refused to prosecute gross and notorious violations of various criminal, neutrality, custom-revenue, and antitrust laws of the United States within said judicial district; whether he has corruptly induced and procured grand juries to return into the district court for the southern district of New York indictments charging crimes without there being evidence before said grand jury which would in any degree justify the finding and filing of such indictments; whether he has been guilty of oppression in corruptly procuring indictments from the grand jury in said district, charging reputable citizens with crime although there was no evidence before the grand jury which would in the least warrant such charges; whether he has corruptly conspired with other persons to spread broadcast throughout the United States maliciously false newspaper publications and reports emanating as official statements and purporting to describe results of investigations conducted by said United States attorney and his assistants with the object of destroying friendly relations between the United States and one or more foreign governments; whether he has unlawfully and feloniously abused the legal process before the grand jury in said district of New York, the Secret Service, and the Bureau of Investigation and Inquiry of the Department of Justice in furtherance of such conspiracy aforesaid; whether he has knowledge or whether there are in existence circumstances from which knowledge is imputed to him, that large sums of money have been expended for or on behalf of foreign governments and of various purveyors and manufacturers of war munitions for the purpose of influencing the actions of said United States attorney in furtherance of a conspiracy; whether he has corruptly neglected and refused to prosecute men who have made the port of New York within said judicial district a military and naval base for foreign belligerent powers; whether he has corruptly neglected and refused to prosecute violations of the Federal statutes prohibiting the loading and shipment of explosives on ships carrying passengers within said judicial district; whether he has corruptly neglected and refused to prosecute violations of the foreign enlistment act and laws of the United States; whether he has corruptly used the powers of his office for the purpose of slandering and libeling peaceable and law-abiding people to their great injury; whether he has abetted, approved, acquiesced in, and permitted unlawful and oppressive misuse of subpœnas and other process before the grand juries in said southern district of New York; whether he has deprived law-abiding citizens of their legal rights, privileges, and immunities; whether he has aided, abetted, and approved unlawful expenditures of public moneys in violation of the laws of the United States; whether he has been guilty of attempts by private solicitation to influence the official actions and opinions of judges in the southern district of New York while in the performance of their judicial duties; whether he has used the powers of his office to cause and procure a discrimination in the assignment of judges to conduct trials in said district so as to discriminate against one or more resident judges; whether he has used the powers of his office to procure or assist in the procurement of judges to be imported into the southern district of New York from other districts for the trial of cases in said district by falsely representing the condition of judicial business within said district; whether he has been guilty of private solicitation with intent to influence the official acts and decisions of judges imported as aforesaid; whether he has corruptly attempted to control decisions and official actions of one or more of such imported judges; whether he has procured the assignment of one or more imported judges for the conduct of trials in the said district for the purpose of preventing defendants in such cases from receiving a fair and impartial trial at the hands of resident judges; whether he has been a party to a conspiracy participated in by his assistant district attorneys and other officials connected with the administration of justice in the said southern district of New York, for the purpose of unlawfully manipulating and controlling the selection of grand and petit jurors in connection with cases in the courts of said district; whether he has been guilty of acts by which the rights of the United States and that of individuals have been unlawfully prejudiced and the orderly and fair administration of justice defeated or

obstructed in one or more instances; whether he has employed the powers of his office for the purpose of shielding and to prevent the exposure of unlawful and improper conduct of one James W. Osborne in relation to facts involved in civil litigation which was pending in the State court in the State of New York; whether he unlawfully protected the said Osborne and others from prosecution for the violation of United States laws; whether he has willfully and corruptly refused and neglected to prosecute gross and notorious violations of the United States Statutes committed by said James W. Osborne and others in the city and State of New York within said district; whether he has prosecuted the office of the United States district attorney for the southern district of New York; whether he has used the powers of his said office as United States district attorney to corruptly and willfully defame, slander, and injure the good name and professional standing of law-abiding citizens of the United States to their great injury for the purpose of protecting the private individual interests of James W. Osborne; whether he has corruptly failed, neglected, and refused to prosecute persons who, while acting as witnesses for the United States in the trial of causes, committed the crime of perjury, subornation of perjury, and conspiracy in connection with the cases of United States *v.* Rae Tanzer, United States *v.* Frank D. Safford, and United States *v.* Albert J. McCullough et al.; whether he used and employed the United States grand jury in the southern district of New York for the purpose of attempting to establish records, which might be used in defense of James W. Osborne, H. Snowden Marshall, Roger B. Wood, and Samuel H. Hershenstein (the last two being assistant United States district attorneys under said H. Snowden Marshall), and not for the purpose of investigation of violations of the United States laws; whether he has corruptly and willfully failed to remove certain of his assistant district attorneys who destroyed documentary evidence material in the trial of a pending case in the United States district court for the southern district of New York; whether he corruptly and maliciously caused to be instituted criminal proceedings against Rae Tanzer and others for the purpose of protecting James W. Osborne, a special United States district attorney and a personal intimate friend of said H. Snowden Marshall; whether he has corruptly and willfully failed and refused to present to the court the trial of cases material and important evidence and in concealing or assisting and acquiescing in the concealment or destruction of material and important evidence relating to pending cases in the United States district court for the southern district of New York; wheher he is corrupt, grossly negligent, and unfit to retain the office as United States district attorney for the southern district of New York; whether he has willfully and persistently violated the laws of the United States in connection with the performance by him of the duties of such United States district attorney for said southern district of New York; whether he has corruptly and willfully withheld and failed to present before the grand jury material and important evidence in connnection with alleged investigations instituted before said grand jury by said H. Snowden Marshall in relation to the cases of United States *v.* Rae Tanzer and United States *v.* Albert J. McCullough et al. and others; whether he has corruptly and willfully refused and neglected to take cognizance of unlawful conduct of his assistant district attorneys in connection with the performance by them of official duties as such assistant district attorneys; whether he has corruptly participated in or acquiesced to the presentation to the court in trial of cases in the southern district of New York of alleged evidence which he knew to be untrue and manufactured, or in the manufacture of and attempt to manufacture such alleged evidence; whether he has produced willful injury and wrong to litigants in said district court and to citizens of the United States by his unlawful and improper conduct; whether he has been guilty of any misbehavior for which he should be impeached.

"And in making this investigation the said committee is hereby authorized to send for persons and papers, administer oaths, take testimony, employ a clerk and stenographer, and is also authorized to appoint a subcommittee to act for and on behalf of the whole committee whenever and wherever it may be deemed advisable to take testimony for the use of said committee. The said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the process of said committee or subcommittee and shall attend the sitting of the same as ordered and directed thereby. The Speaker shall have authority to sign and the Clerk to attest subpœnas for any witness or witnesses."

This resolution (afterwards numbered 90) was on the same day referred by the House to the Committee on the Judiciary.

4. On the 27th day of January, 1916, the House passed H. Res. 110, which is as follows:

[House resolution 110, Sixty-fourth Congress, first session.]

Resolved, That the Committee on the Judiciary in continuing their consideration of H. Res. 90 be authorized and empowered to send for persons and papers, to subpœna witnesses, to administer oaths to such witnesses, and take their testimony.

The said committee is also authorized to appoint a subcommittee to act for and on behalf of the whole committee wherever it may be deemed advisable to take testimony for said committee. In case such subcommittee is appointed it shall have the same powers in respect to obtaining testimony as are herein given to the Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall attend the sittings of such subcommittee and serve the process of same.

In case the Committee on the Judiciary or a subcommittee thereof deems it necessary it may employ such clerks and stenographers as are required to carry out the authority given in this resolution, and the expenses so incurred shall be paid out of the contingent fund of the House.

The Speaker of the House of Representatives shall have authority to sign, and the Clerk thereof to attest, subpœnas for witnesses, and the Sergeant at Arms or a deputy shall serve them.

5. That Representatives Carlin, Gard, and Nelson were appointed by the Judiciary Committee of the House a subcommittee to hear and report under the House resolution the facts as to the impeachment charges heretofore mentioned against H. Snowden Marshall, United States district attorney for the southern district of New York.

6. That while said committee were hearing testimony in New York City as to the truth of said charges in accordance with the resolution and pursuant to authority given to them, that H. Snowden Marshall, the person against whom said impeachment proceeding was pending, without just cause published in the New York Times, a daily paper issued in the city of New York, and thereafter delivered to said subcommittee aforementioned the following letter:

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, March 4, 1916.

SIR: Yesterday afternoon, as I am informed, your honorable committee ordered the arrest of Mr. L. R. Holme, a representative of a newspaper which had published an article at which you took offense. The unfortunate gentleman of the press was placed in custody under your orders. He was taken to the United States marshal to be placed in confinement (I do not understand whether his sentence was to be one day or a dozen years). The marshal very properly declined to receive the prisoner. This left you at a loss, and I am advised that you tried to work your way out of the awkward situation by having Mr. Holme brought back and telling him that you were disposed to be "kind" to him and then discharged him for the purpose of avoiding unpleasant consequences to yourselves.

You are exploiting charges against me of oppressive conduct toward a member of your honorable body who is charged with a violation of law and of oppressive conduct on my part toward shysters in the blackmailing and bankruptcy business.

I may be able to lighten your labors by offering to resign if you can indicate anything I ever did that remotely approximates the lawless tyranny of your order of arrest of Mr. Holme.

The supposed justification of your order that Mr. Holme be placed in custody was his refusal to answer the question you asked as to where he got the information on which was based the article which displeased you.

It is not necessary for you to place anyone under arrest in order to get the answers to the question which you asked Mr. Holme, because I can and will answer it. I gave Mr. Holme information, part of which he published and from which he made deductions, so that if your honorable committee has a grievance it is against me and not against him.

What I told him was about as follows:

I said that your expedition to this town was not an investigation conducted in good faith, but was a deliberate effort to intimidate any district attorney who had the temerity to present charges against one of your honorable body.

I said that your whole proceeding here was irregular and extraordinary; that I had never heard of such conduct of an impeachment proceeding; that charges of this sort were not usually heard in public until the House of Representatives had considered them and were willing to stand back of them.

I pointed out to him that you, contrary to usual practice, had come here and had held public hearings; that among your witnesses you had invited every rogue that you could lay your hands on to come before you and blackguard and slander me and my assistants under the full privilege of testifying before a congressional committee.

I told him that you had called one of my junior assistants before you and had attempted to make it publicly appear that his refusal to answer your questions as to what occurred in the grand jury room in the Buchanan case was due solely to my orders. I said that at the time you attempted to convey this public impression you knew that it was misleading because I had been asked by you to produce the minutes of the grand jury and had been instructed by the Attorney General not to comply with your request, as you well knew. I showed him the telegram of the Attorney General to me and showed him a copy of my letter to you, dated February 29, 1916, in which I sent you a copy of the telegram of the Attorney General instructing me not to give you the grand jury minutes.

I told him that you were traveling around in your alleged investigation of me with Buchanan's counsel, Walsh and David Slade, in constant conference with you. I said that I believed that every word of the evidence, whether in so-called secret sessions or not, had been placed at the disposal of these worthies, and that I would be just as willing to give the grand jury minutes to a defendant as to give them to your honorable subcommittee.

I told him that I did not share the views which seemed to prevail in your subcommittee on this subject. I said that I regarded a Member of Congress who would take money for an unlawful purpose from any foreign agent as a traitor, and that it was a great pity that such a person could only be indicted under the Sherman law, which carries only one year in jail as punishment.

I said that it was incomprehensible to me how your honorable subcommittee should rush to the assistance of an indicted defendant; how you had apparently resolved to prevent prosecution by causing the district attorney in charge to be publicly slandered.

I told him that I would not permit the prosecution of the persons whose cause you had apparently espoused to be impeded by you; I said that if you wanted the minutes of the grand jury in any case, you would not get them as long as I remained in office.

You will observe from the foregoing statement that what Mr. Holme published may have been based on what I said. If you have any quarrel, it is with me and not with him.

It is amazing to me to think that you supposed that I did not understand what you have been attempting to do during your visit here. I realized that your effort was to ruin me and my office by publishing with your full approval the complaints of various persons who have run afoul of the criminal law under my administration. Your subcommittee has endeavored by insulting questions to my assistants and others, by giving publicity and countenance to the charges of rascals, and by refusing to listen to the truth and refusing to examine public records to which your attention was directed to publicly disgrace me and my office.

I propose to make this letter public.

Respectfully,

H. SNOWDEN MARSHALL,
United States Attorney.

Hon. C. C. CARLIN,
Chairman Subcommittee of the Judiciary Committee
of the House of Representatives,
323 Federal Building, New York, N. Y.

7. That on March 10, 1916, the said H. Snowden Marshall published, in reference to the said subcommittee heretofore named, the following letter:

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, March 10, 1916.

DEAR SIR: Referring to my letter of March 4, addressed to the chairman of the subcommittee which has recently taken testimony in New York concerning my administration of my office, I notice from the press that some persons appear to have construed my statements as directed toward your honorable committee as a whole. I beg to advise you that the criticisms in that letter were addressed to the methods pursued by the subcommittee. I do not retract nor modify any of those criticisms. But I did not intend (nor do I think my letter should be so construed) to reflect in any way upon the Judiciary Committee, nor did I question the power of the House of Representatives to order such an investigation.

If you and the other members of your committee, for whom I have high respect, have gained the impression that my letter carried any personal reflection upon your honorable committee, it gives me pleasure to assure you that I had no such purpose.

Respectfully,

H. SNOWDEN MARSHALL.

HON. EDWIN Y. WEBB,
Chairman of the Judiciary Committee,
House of Representatives, Washington, D. C.

These are the material facts in the case.

8. We conclude and find that the aforesaid letter written and published by said H. Snowden Marshall to Hon. C. C. Carlin, chairman of the subcommittee of the Judiciary Committee of the House of Representatives, on March 4, 1916 (and copied herein in finding of fact No. 6; also in Report No. 494 copied herein), is as a whole and in several of the separate sentences defamatory and insulting and tends to bring the House into public contempt and ridicule, and that the said H. Snowden Marshall, by writing and publishing the same, is guilty of contempt of the House of Representatives of the United States because of the violation of its privileges, its honor and its dignity.

9. We find that Mr. Marshall's testimony is an aggravation of his contempt.

COMMENT ON LAW AND FACTS.

Mr. Marshall denies any intention to insult or stand in contempt of the Judiciary Committee or the House of Representatives, but he practically concedes in his testimony his contempt for the subcommittee and his desire by these publications to bring the subcommittee into ridicule and disrepute. If this is not wholly conceded by him in his testimony, it is certainly very fully proven. He reaffirms in his testimony the views heretofore expressed by him in the letters referred to against the subcommittee, and declines to offer any apology or retraction of the offensive matter in the letters contained, but rather reiterates and reaffirms it and thereby aggravates his contempt. In our opinion it is immaterial to the determination of this case whether the defendants Buchanan and others are guilty, as charged in the indictment in the district court of New York, or not, or whether the impeachment charges against H. Snowden Marshall are true or not. Both may be guilty or both may be innocent, or one guilty and the other innocent, with effect on the findings in this case. Therefore the select committee has made no investigation nor does it express any opinion as to the merits of either of said

cases. We are considering under the resolution whether or not the facts herein set forth constitute a contempt by a violation of the privileges of the House of Representatives on the part of H. Snowden Marshall. No legislative body consisting of a large number of members can move from one place to another to take testimony in cases where its power and authority or dignity is called into question. Its power in this respect must, therefore, necessarily be delegated to one of its committees or a subcommittee by a proper resolution, as was done in this case. This delegation of power to a subcommittee is lawful, and carries with it all of the authority belonging to the House in the execution of the immediate purpose for which the committee was called into existence.

Any conduct that would be a violation of the privileges of the House if directed against the House in the first place, would be a contempt against the House and a breach of its privileges when directed against one of its committees or subcommittees appointed by authority of the House to do a specific thing and acting within its delegated power and in the scope of its authority. Any other view would leave the House powerless to protect its honor and dignity and its constitutional rights. It would set at defiance the sovereignty of the people represented by the House. That the House as a representative body has the inherent power to protect itself from defamation and all slanderous and lawless conduct that would bring it into reproach and popular contempt, whether uttered or committed in the presence of the House or elsewhere, has not been disputed since the case of Anderson *v.* Dunn (6 Wheaton, 204). Offensive, abusive, and defamatory language against a committee of the House acting within its authority is offensive, abusive, and defamatory against the House, and is just as dangerous to the integrity of that body as if it had been committed in its presence.

Mr. Justice Johnson in delivering the opinion in the case referred to, Anderson *v.* Dunn, among other things said:

> It is certainly true that there is no power given by the Constitution to either House to punish for contempts, except when committed by their own Members. Nor does the judicial or criminal power given to the United States, in any part, expressly extend to the infliction of punishment for contempt of either house, or any one coordinate branch of the Government. Shall we, therefore, decide that no such power exists? * * * But if there is one maxim that necessarily rides over all others, it is that the public functionaries must be left at liberty to exercise the powers which the people have intrusted to them. The interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers. * * * That "the safety of the people is the supreme law," not only comports with but is indispensable to the exercise of those powers in their public functionaries, without which that safety can not be guarded. On this principle it is that courts of justice are universally acknowledged to be vested by their very creation with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution.
>
> It is true that the courts of justice of the United States are vested, by express statute provision, with power to fine and imprison for contempts; but it does not follow from this circumstance that they would not have exercised that power without the aid of the statute or not, in cases, if such should occur, to which such statute provision may not extend; on the contrary, it is a legislative assertion of this right, as incidental to a grant of judicial power, and can only be considered either as an instance of abundant caution or a legislative declaration

that the power of punishing for contempt shall not extend beyond its known and acknowledged limits of fine and imprisonment.

But it is contended that if this power in the House of Representatives is to be asserted on the plea of necessity, the ground is too broad and the result too indefinite; that the executive and every coordinate and even subordinate branch of the Government may resort to the same justification, and the whole assume to themselves, in the exercise of this power, the most tyrannical licentiousness.

This is unquestionably an evil to be guarded against, and if the doctrine may be pushed to that extent it must be a bad doctrine, and is justly denounced.

But what is the alternative? The argument obviously leads to the total annihilation of the power of the House of Representatives to guard itself from contempts, and leaves it exposed to every indignity and interruption that rudeness, caprice, or even conspiracy may meditate against it. This result is fraught with too much absurdity not to bring into doubt the soundness of any argument from which it is derived. That a deliberate assembly, clothed with the majesty of the people, and charged with the care of all that is dear to them; composed of the most distinguished citizens, selected and drawn together from every quarter of a great Nation; whose deliberations are required by public opinion to be conducted under the eye of the public, and whose decisions must be clothed with all that sanctity which unlimited confidence in their wisdom and purity can inspire; that such an assembly should not possess the power to suppress rudeness, or repel insult, is a supposition too wild to be suggested. And, accordingly, to avoid the pressure of these considerations, it has been argued that the right of the respective Houses to exclude from their presence, and their absolute control within their own walls, carry with them the right to punish contempts committed in their presence; while the absolute legislative power given to Congress within this District enables them to provide by law against all other insults against which there is any necessity for providing.

It is to be observed that, so far as the issue of this cause is implicated, this argument yields all right of the plaintiff in error to a decision in his favor; for, nonconstat, from the pleadings, but that this warrant issued for an offense committed in the immediate presence of the House.

Nor is it immaterial to notice what difficulties the negation of this right in the House of Representatives draws after it, when it is considered that the concession of the power, if exercised within their walls, relinquishes the great grounds of the argument, to wit, the want of an express grant, and the unrestricted and undefined nature of the power here set up. For why should the House be at liberty to exercise an ungranted, an unlimited, and undefined power within their walls, any more than without them? If the analogy with individual right and power be resorted to, it will reach no further than to exclusion, and it requires no exuberance of imagination to exhibit the ridiculous consequences which might result from such a restriction, imposed upon the conduct of a deliberative assembly.

In Nugent *v.* Beale (Smith's Digest of Decisions and Precedents, 601), the court says:

> The jurisdiction of the Senate in cases of contempt of its authority depends upon the same ground and reasons upon which the acknowledged jurisdiction of other judicial tribunals rests, to wit, the necessity of such jurisdiction to enable the Senate to exercise its high constitutional functions—a necessity at least equal to that which supports the like jurisdiction which has been exercised by all judicial tribunals and legislative assemblies in this country from its first settlement, and in England from time immemorial.

In Hinds' Precedents of the House of Representatives, volume 2, under the heading of Power to Punish for Contempt, pages 1046 to 1142, may be found the digest of the decisions sustaining the power of the House to determine what is contempt and to punish for the same. These decisions are made by the House and by the Senate and the Supreme Court of the United States. Reference is made also to Rawle on the Constitution, page 48, and Story on the Constitution, volume 1, section 847.

We find, therefore, that the House has full power to punish for contempt committed in its presence or not within its presence, by pub-

lication of matter that is defamatory against it or its committee lawfully constituted and acting within its authority. We find as stated that the privileges of the House in this case were breached by H. Snowden Marshall by the letter which he wrote to the subcommittee, heretofore referred to, and copied in Report No. 494 herein contained. This letter as a whole is insulting, defamatory, and a clear expression of contempt. The purpose for which it was written and printed was to defame—to bring into ridicule and contempt—the subcommittee of the Judiciary Committee having under investigation the impeachment charges against H. Snowden Marshall. It was as much as violation of the privileges of the House to have directed a scurrilous and offensive letter of this character against one of its committees as if it had been addressed directly to the House.

It is proper for us to say that Mr. Marshall was given every opportunity to retract or apologize or in some way modify his statements contained in the letter. Parts of the letter containing the most defamatory matter were read to him, and he was asked if he meant to still say that that was true. He reaffirmed and reasserted the same, only with the statement that it was intended to criticize the procedure of the subcommittee and was not intended as a contempt of the House. It is clear that if the House could tolerate such a construction of this letter and could tolerate such vile and defamatory language against one of its committees, it would be powerless to conduct impeachment trials or perform any other duty without living under the disgrace of the contempt that would necessarily come to a body so unmindful of its duties to the people as to permit such insult and injury.

SUMMARY.

Article II, section 4, of the Constitution says:

> The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

A United States district attorney is a civil officer within the meaning of this section of the Constitution. (See Rawle on Constitution, 213; 1 Story on Constitution, 790; Bouvier Dictionary, p. 319 of vol. 1.)

The impeachment of a civil officer must be by the House of Representatives. (United States Constitution, Article I, section 2.) Impeachments are judicial in their nature.

The committee or subcommittee of the House appointed to investigate the facts under an impeachment proceeding pending in the House, and proceeding within the scope of their authority to perform this duty in taking testimony, is acting for and in place of the House.

A contempt by word, act, publication, or otherwise of a committee having jurisdiction in such cases and acting within the same is a contempt of the House which appointed it, and may be punished as such.

In this case Mr. Marshall was and is a United States district attorney. He was impeached in conformity to the Constitution.

The subcommittee was appointed and had jurisdiction in the matter to make the inquiry it was engaged in.

Mr. Marshall's letter of March 4, 1916, heretofore referred to is defamatory and tends to bring the committee and House into contempt and ridicule. By the printing and publication of the same Mr. Marshall violated the privileges of the House, was guilty of contempt, and is guilty of contempt of the House of Representatives until he purges himself thereof or is purged by punishment.

The power of the House to punish for contempt is not confined to a reprimand. Punishment may be inflicted in the discretion of the House for a period not longer than the duration of the Congress acting.

As to the method of procedure that should be followed in the House in trial of the said H. Snowden Marshall for the contempt which the committee finds that he has committed, we recommend the passage of the following resolution:

Resolved, That the Speaker do issue his warrant, directed to the Sergeant at Arms, commanding him to take in custody, wherever to be found, the body of H. Snowden Marshall, of the State of New York, and to proceed forthwith to bring the said H. Snowden Marshall to the bar of the House of Representatives, to answer the charge that he, on March 4, 1916, in the city of New York, did violate the privileges of the House of Representatives of the United States by writing and causing to be published the following letter:

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, March 4, 1916.

SIR: Yesterday afternoon, as I am informed, your honorable committee ordered the arrest of Mr. L. R. Holme, a representative of a newspaper which had published an article at which you took offense. The unfortunate gentleman of the press was placed in custody under your orders. He was taken to the United States marshal to be placed in confinement (I do not understand whether his sentence was to be one day or a dozen years). The marshal very properly declined to receive the prisoner. This left you at a loss, and I am advised that you tried to work your way out of the awkward situation by having Mr. Holme brought back and telling him that you were disposed to be "kind" to him and then discharged him for the purpose of avoiding unpleasant consequences to yourselves.

You are exploiting charges against me of oppressive conduct toward a member of your honorable body who is charged with a violation of law and of oppressive conduct on my part toward shysters in the blackmailing and bankruptcy business.

I may be able to lighten your labors by offering to resign if you can indicate anything I ever did that remotely approximates the lawless tyranny of your order of arrest of Mr. Holme.

The supposed justification of your order that Mr. Holme be placed in custody was his refusal to answer the question you asked as to where he got the information on which was based the article which displeased you.

It is not necessary for you to place anyone under arrest in order to get the answers to the question which you asked Mr. Holme, because I can and will answer it. I gave Mr. Holme information, part of which he published and from which he made deductions, so that if your honorable committee has a grievance it is against me and not against him.

What I told him was about as follows:

I said that your expedition to this town was not an investigation conducted in good faith, but was a deliberate effort to intimidate any district attorney who had the temerity to present charges against one of your honorable body.

I said that your whole proceeding here was irregular and extraordinary; that I had never heard of such conduct of an impeachment proceeding; that charges of this sort were not usually heard in public until the House of Representatives had considered them and were willing to stand back of them.

I pointed out to him that you, contrary to usual practice, had come here and had held public hearings; that among your witnesses you had invited every rogue that you could lay your hands on to come before you and blackguard and slander me and my assistants under the full privilege of testifying before a congressional committee.

I told him that you had called one of my junior assistants before you and had attempted to make it publicly appear that his refusal to answer your questions as to what occurred in the grand jury room in the Buchanan case was due solely to my orders. I said that at the time you attempted to convey this public impression you knew that it was misleading because I had been asked by you to produce the minutes of the grand jury and had been instructed by the Attorney General not to comply with your request, as you well knew. I showed him the telegram of the Attorney General to me and showed him a copy of my letter to you, dated February 29, 1916, in which I sent you a copy of the telegram of the Attorney General instructing me not to give you the grand jury minutes.

I told him that you were traveling around in your alleged investigation of me with Buchanan's counsel, Walsh and David Slade, in constant conference with you. I said that I believed that every word of the evidence, whether in so-called secret sessions or not, had been placed at the disposal of these worthies, and that I would be just as willing to give the grand jury minutes to a defendant as to give them to your honorable subcommittee.

I told him that I did not share the views which seemed to prevail in your subcommittee on this subject. I said that I regarded a Member of Congress who would take money for an unlawful purpose from any foreign agent as a traitor, and that it was a great pity that such a person could only be indicted under the Sherman law, which carries only one year in jail as punishment.

I said that it was incomprehensible to me how your honorable subcommittee should rush to the assistance of an indicted defendant; how you had apparently resolved to prevent prosecution by causing the district attorney in charge to be publicly slandered.

I told him that I would not permit the prosecution of the persons whose cause you had apparently espoused to be impeded by you; I said that if you wanted the minutes of the grand jury in any case, you would not get them as long as I remained in office.

You will observe from the foregoing statement that what Mr. Holme published may have been based on what I said. If you have any quarrel, it is with me, and not with him.

It is amazing to me to think that you supposed that I did not understand what you have been attempting to do during your visit here. I realized that your effort was to ruin me and my office by publishing with your full approval the complaints of various persons who have run afoul of the criminal law under my administration. Your subcommittee has endeavored by insulting questions to my assistants and others, by giving publicity and countenance to the charges of rascals and by refusing to listen to the truth and refusing to examine public records to which your attention was directed, to publicly disgrace me and my office.

I propose to make this letter public.

Respectfully,

H. SNOWDEN MARSHALL,
United States Attorney.

Hon. C. C. CARLIN,
Chairman Subcommittee of the Judiciary Committee
of the House of Representatives,
323 Federal Building, New York, N. Y.

That the said H. Snowden Marshall, in writing and publishing said letter, was guilty of a breach of the privileges and a contempt of the House of Representatives, and that the said H. Snowden Marshall be furnished with a copy of this resolution, and a copy of the report of the select committee of the House of Representatives, appointed to investigate the charges made against him in the House of Representatives.

Resolved, That when H. Snowden Marshall shall be brought to the bar of the House, to answer the charge of having violated the privileges of the House of Representatives, as afore set out, the Speaker shall then cause to be read to said H. Snowden Marshall the findings of fact and findings of law by the special committee of the House, charged with the duty of investigating whether or not the

said H. Snowden Marshall had violated the privileges of the House of Representatives, or was in contempt of same; the Speaker shall then inquire of said H. Snowden Marshall if he desires to be heard, and to have counsel on the charge of being in contempt of the House of Representatives for having violated its privileges. If the said H. Snowden Marshall desires to avail himself of either of these privileges, the same shall be granted him. If not, the House shall thereupon proceed to take order in the matter.

JOHN A. MOON.
JOHN N. GARNER.
CHARLES R. CRISP.
JOHN A. STERLING.
I. L. LENROOT.

APPENDIX.

BEFORE A SPECIAL COMMITTEE OF THE HOUSE OF REPRESENTATIVES TO CONSIDER THE REPORT FROM THE JUDICIARY COMMITTEE WITH REFERENCE TO CERTAIN CONDUCT OF H. SNOWDEN MARSHALL.

HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, April 7, 1916.

The special committee met at 10 o'clock a. m., Hon. John A. Moon presiding.

Present: Representatives Garner, Crisp, Lenroot, and Sterling.

The CHAIRMAN. The committee will come to order. The stenographer will insert in the record at this point Report No. 494 as to alleged official misconduct of H. Snowden Marshall; also H. R. 193.

[House Report No. 494. Sixty-fourth Congress, first session.]

By direction of the Committee on the Judiciary, I beg leave to make the following report, in the nature of a statement, to the House of Representatives. On the 12th day of January, 1916, Hon. Frank Buchanan, a Representative in Congress from the State of Illinois, arose, in his responsible position, on the floor of the House and impeached H. Snowden Marshall, district attorney for the southern district of the State of New York, charging the said H. Snowden Marshall with numerous malfeasances and misfeasances and with corrupt and improper behavior and conduct in office. Immediately after the reading of said charges, Representative Buchanan offered for the immediate consideration of the House resolution 90, which provided, among other things, "that the Committee on the Judiciary be directed to inquire and report whether the action of this House is necessary concerning the alleged official misconduct of H. Snowden Marshall," etc. After debate on the resolution, the House, upon motion of Mr. Fitzgerald, of New York, referred the resolution to the Committee on the Judiciary for its consideration and action.

The Committee on the Judiciary immediately began the consideration of said resolution and called Representative Buchanan before it to make such statement and furnish such information concerning the truth of his impeachment charges, as set out in House resolution 90, as he was able to make and furnish. Thereafter, on the 27th day of January, 1916, by direction of the Judiciary Committee, the chairman thereof offered in the House of Representatives the following resolution:

[House resolution 110.]

"*Resolved*, That the Committee on the Judiciary in continuing their consideration of House resolution 90 be authorized and empowered to send for persons and papers, to subpœna witnesses, to administer oaths to such witnesses, and take their testimony.

"The said committee is also authorized to appoint a subcommittee to act for and on behalf of the whole committee wherever it may be deemed advisable to take testimony for said committee. In case such subcommittee is appointed, it shall have the same powers in respect to obtaining testimony as are herein given to the Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall attend the sittings of such subcommittee and serve the process of same.

"In case the Committee on the Judiciary or a subcommittee thereof deems it necessary it may employ such clerks and stenographers as are required to carry out the authority given in this resolution, and the expenses so incurred shall be paid out of the contingent fund of the House.

"The Speaker of the House of Representatives shall have authority to sign, and the clerk thereof to attest, subpœnas for witnesses, and the Sergeant at Arms or a deputy shall serve them."

The said resolution was on said date unanimously agreed to.

While further considering the said House resolution 90 and the said House resolution 110, on the 31st day of January, 1916, the Committee on the Judiciary authorized the chairman to appoint a subcommittee of three to execute the purposes of House resolution 110 to act for and on behalf of the full committee wherever it may be deemed advisable to take testimony for said committee, and on February 1, 1916, the chairman appointed Messrs. Charles C. Carlin, Warren Gard, and John M. Nelson as members of such subcommittee.

Thereafter the said subcommittee organized and heard the testimony of certain witnesses in the Judiciary Committee rooms in the city of Washington. The subcommittee determined, for its further information and in carrying out the duties assigned it under the resolution of the House of Representatives, that it should hear the testimony of certain other witnesses in the city of New York, and on the 28th day of February, 1916, the said subcommittee, under subpœnas duly signed by the Speaker of the House of Representatives and attested by the clerk thereof, caused certain witnesses to be brought before it, in the Federal post-office building in the city of New York, and continued the examination of witnesses upon said charges up to and including the 4th day of March, 1916.

On the 3d day of March, 1916, there appeared in a New York newspaper an article containing, among other things, the following language:

"It is the belief in the district attorney's office that the real aim of the Congress investigation is to put a stop to the criminal investigation of the pro-German partisans."

On the 3d of March, 1916, the subcommittee called before it one, Leonard R. Holme, who testified to the subcommittee that he wrote the article containing the foregoing language, but when asked whether or not he conferred with anybody in the district attorney's office before the article was written replied that he declined to give the source of his information. The chairman of the subcommittee then propounded this question to the witness, "Did you confer with Mr. Marshall before you wrote this article?" To which the witness replied, "I respectfully decline to answer the question, sir." The chairman of the subcommittee then propuonded the following question to him, "Did you confer with anybody in Mr. Marshall's office?" To which the witness replied, "I respectfully decline to answer that question, sir."

Whereupon, the sergeant at arms was directed by the chairman of the subcommittee to take charge of the witness and keep him in custody until the further order of the committee. At 4.10 o'clock p. m. of the same day, the chairman of the subcommittee again propounded the foregoing questions to Witness Holme, and the following proceedings were had:

"Mr. CARLIN. Mr. Holme, the committee has directed me to order you to answer question which was asked you. Mr. Stenographer, read the testimony of Mr. Holme.

"(The entire previous testimony of Mr. Holme was read to the committee by the stenographer in the hearing of the committee only.)

"Mr. CARLIN. Mr. Holme, I hand you this article in the sixth column of page 4 of the New York Times, dated Friday, March 3, 1916. The article is headed 'Marshall refuses Buchanan evidence.' I now call your attention to this paragraph of the article:

"'It is the belief in the district attorney's office that the real aim of the Congress investigation is to put a stop to the criminal investigation of the pro-German partisans.'

"I ask you from whom you got that information?

"Mr. HOLME. That information, sir, is a deduction. I have known at the time these proceedings were begun in Washington, it was before the indictment of Congressman Buchanan, that there had been a considerable amount of talk around this building as to their nature. I am down here practically every day of my life, and I meet with a great many men who are connected with the district attorney's office and who are in this building in various other regular capacities, and I based that paragraph entirely upon my knowledge of the general gossip around the building and the general feeling in the building.

"Mr. CARLIN. Why did you not state that, instead of saying it is the belief in the district attorney's office?

"Mr. HOLME. Well, sir, it comes to much the same thing, does it not? The district attorney's office is a large organization.

"Mr. CARLIN. Is that your answer?

"Mr. HOLME. Yes, sir.

"Mr. CARLIN. Did you base that part of the article upon a conference held with H. Snowden Marshall or any subordinate of his in the district attorney's office?

"Mr. HOLME. I based that article on my general knowledge of the conditions surrounding this proceeding and the general opinion floating around the building.

"Mr. CARLIN. You state that it is the general belief in the district attorney's office. Now, who in the district attorney's office expressed that belief?

"Mr. HOLME. I don't think I could give you any definite names, because I have discussed this matter with a large number of different people at various times.

"Mr. CARLIN. As a matter of fact, did anybody in the district attorney's office express that belief?

"Mr. HOLME. Yes, sir.

"Mr. CARLIN. Who?

"Mr. HOLME. I can only remember a very few, and I respectfully decline, as a newspaper man, to express their opinions, which are often given to me in general conversation.

"Mr. CARLIN. Was the belief expressed by Mr. Marshall or either of his assistants?

"Mr. HOLME. I respectfully decline to answer, sir.

"Mr. CARLIN. Mr. Stenographer, insert in the record this article which I hand you, and the date line of the paper.

"Mr. GARD. I understand you to say, Mr. Holme, that this extract which has been read to you was written by you?

"Mr. HOLME. Yes, sir.

"Mr. GARD. And the extract is this:

"'It is the belief of the district attorney's office that the real aim of the congressional investigation is to put a stop to the criminal investigation of the pro-German partisans.'

"You wrote that?

"Mr. HOLME. Yes, sir.

"Mr. GARD. And I understand also that you decline and refuse to answer questions as to whether you obtained that information from anyone in the district attorney's office of the southern district of New York?

"Mr. HOLME. Yes, sir.

"Mr. GARD. You decline to answer that?

"Mr. HOLME. Yes, sir.

"Mr. CARLIN. Now, then, Mr. Holme, I am directed by the committee to order you to answer that. Do you still decline?

"Mr. HOLME. I do, respectfully, sir.

"Mr. CARLIN. Then, I am directed to say to you, for the record, that this committee determines you to be in contempt of the order of the committee and of the House of Representatives of the Congress of the United States, and that for the present you will be released from the custody of the marshal until the committee, if it sees proper, shall proceed in the manner prescribed by statute in such cases. We want to be kind to you. We have no desire to be harsh with you. We realize to some extent your embarrassment. We have a duty to discharge, and we think under the circumstances we will discharge it in this way and release you from the custody of the Sergeant at Arms of the House."

On Saturday, the 4th day of March, 1916, the said H. Snowden Marshall, as district attorney for the southern district of New York, caused to be transmitted to C. C. Carlin, chairman of said subcommittee, then in the performance of its duties, as required by the House of Representatives, the following letter:

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, March 4, 1916.

SIR: Yesterday afternoon, as I am informed, your honorable committee ordered the arrest of Mr. L. R. Holme, a representative of a newspaper which had published an article at which you took offense. The unfortunate gentleman of the press was placed in custody under your orders. He was taken to the United States marshal to be placed in confinement (I do not understand whether his sentence was to be one day or a dozen years). The marshal very properly declined to receive the prisoner. This left you at a loss, and I am advised that you tried to work your way out of the awkward situation by having Mr. Holme brought back and telling him that you were disposed to be "kind" to him and then discharged him for the purpose of avoiding unpleasant consequences to yourselves.

You are exploiting charges against me of oppressive conduct toward a member of your honorable body who is charged with a violation of law and of oppressive conduct on my part toward shysters in the blackmailing and bankruptcy business.

I may be able to lighten your labors by offering to resign if you can indicate anything I ever did that remotely approximates the lawless tyranny of your order of arrest of Mr. Holme.

The supposed justification of your order that Mr. Holme be placed in custody was his refusal to answer the question you asked as to where he got the information on which was based the article which displeased you.

It is not necessary for you to place anyone under arrest in order to get the answers to the question which you asked Mr. Holme, because I can and will answer it. I gave Mr. Holme information, part of which he published and from which he made deductions, so that if your honorable committee has a grievance it is against me and not against him.

What I told him was about as follows:

I said that your expedition to this town was not an investigation conducted in good faith, but was a deliberate effort to intimidate any district attorney who had the temerity to present charges against one of your honorable body.

I said that your whole proceeding here was irregular and extraordinary; that I had never heard of such conduct of an impeachment proceeding; that charges of this sort were not usually heard in public until the House of Representatives had considered them and were willing to stand back of them.

I pointed out to him that you, contrary to usual practice, had come here and had held public hearings; that among your witnesses you had invited every rogue that you could lay your hands on to come before you and blackguard and slander me and my assistant under the full privilege of testifying before a congressional committee.

I told him that you had called one of my junior assistants before you and had attempted to make it publicly appear that his refusal to answer your questions as to what occurred in the grand jury room in the Buchanan case was due solely to my orders. I said that at the time you attempted to convey this public impression you knew that it was misleading because I had been asked by you to produce the minutes of the grand jury and had been instructed by the Attorney General not to comply with your request, as you well knew. I showed him the telegram of the Attorney General to me and showed him a copy of my letter to you, dated February 29, 1916, in which I sent you a copy of the telegram of the Attorney General instructing me not to give you the grand jury minutes.

I told him that you were traveling around in your alleged investigation of me with Buchanan's counsel, Walsh and David Slade, in constant conference with you. I said that I believed that every word of the evidence, whether in so-called secret sessions or not, had been placed at the disposal of these worthies, and that I would be just as willing to give the grand jury minutes to a defendant as to give them to your honorable subcommittee.

I told him that I did not share the views which seemed to prevail in your subcommittee on this subject. I said that I regarded a Member of Congress who would take money for an unlawful purpose from any foreign agent as a traitor, and that it was a great pity that such a person could only be indicted under the Sherman law, which carries only one year in jail as punishment.

I said that it was incomprehensible to me how your honorable subcommittee should rush to the assistance of an indicted defendant; how you had apparently resolved to prevent prosecution by causing the district attorney in charge to be publicly slandered.

I told him that I would not permit the prosecution of the persons whose cause you had apparently espoused to be impeded by you; I said that if you wanted the minutes of the grand jury in any case, you would not get them as long as I remained in office.

You will observe from the foregoing statement that what Mr. Holme published may have been based on what I said. If you have any quarrel, it is with me, and not with him.

It is amazing to me to think that you supposed that I did not understand what you have been attempting to do during your visit here. I realized that your effort was to ruin me and my office by publishing with your full approval the complaints of various persons who have run afoul of the criminal law under my administration. Your subcommittee has endeavored by insulting questions to my assistants and others, by giving publicity and countenance to the charges of rascals and by refusing to listen to the truth and refusing to examine public records to which your attention was directed, to publicly disgrace me and my office.

I propose to make this letter public.

Respectfully,

H. SNOWDEN MARSHALL,
United States Attorney.

Hon. C. C. CARLIN,
Chairman Subcommittee of the Judiciary Committee
of the House of Representatives,
323 Federal Building, New York, N. Y.

At the same time or before this letter was sent to the subcommittee, it was given to the newspapers and published by them.

On the 9th day of March, 1916, the subcommittee aforesaid, through its chairman, Hon. C. C. Carlin, submitted to the Committee on the Judiciary the foregoing letter of H. Snowden Marshall.

On or about the 11th day of March, 1916, the following letter was received by the chairman of the Judiciary Committee and immediately laid before the full committee:

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, March 10, 1916.

DEAR SIR: Referring to my letter of March 4, addressed to the chairman of the subcommittee which has recently taken testimony in New York concerning my administration of my office, I notice from the press that some persons appear to have construed my statements as directed toward your honorable committee as a whole. I beg to advise you that the criticisms in that letter were addressed to the methods pursued by the subcommittee. I do not retract nor modify any of those criticisms. But I did not intend (nor do I think my letter should be so construed) to reflect in any way upon the Judiciary Committee, nor did I question the power of the House of Representatives to order such an investigation.

If you and the other members of your committee, for whom I have high respect, have gained the impression that my letter carried any personal reflection upon your honorable committee, it gives me pleasure to assure you that I had no such purpose.

Respectfully,

H. SNOWDEN MARSHALL.

Hon. EDWIN Y. WEBB,
Chairman of the Judiciary Committee, House of Representatives, Washington, D. C.

The Judiciary Committee has carefully considered said letters in the light of congressional and judicial precedents as touching the prerogatives of the House of Representatives and its Members, and the committee has come to the determination that said letters, their publication and attendant circumstances, are of such nature, that they should be called to the attention of the House. For obvious reasons the committee deems it advisable to take this step rather than to report directly upon the facts and the law in the case. I am, therefore, directed by the committee to report the whole matter to the House of Representatives, with the recommendation that a select committee of five be appointed by the Speaker to report upon the facts in this case; the violations, if any, of the privileges of the House or the Committee on the Judiciary or the subcommittee thereof; the power of the House to punish for contempt; and the procedure in contempt proceedings, to the end that the privileges of the House shall be maintained and the rights of the Members protected in the performance of their official duties.

[H. Res. 193. Sixty-fourth Congress, first session.]

Resolved, That a select committee of five members be appointed forthwith by the Speaker to consider the report, in the nature of a statement, from the Judiciary Committee with reference to certain conduct of H. Snowden Marshall, and to report to the House of Representatives the facts in the case; the violations, if any, of the privileges of the House of Representatives or of the Committee on the Judiciary, or of the subcommittee thereof; the power of the House to punish for contempt; and the procedure in contempt proceedings, in case they find a contempt has been committed, to the end that the privileges of the House shall be maintained and the rights of Members protected in the performance of their official duties.

The select committee shall have the power to send for persons and papers and shall submit its report to the House not later than April fourteenth, nineteen hundred and sixteen.

What is the pleasure of the committee? What will you have done first, gentlemen?

Mr. CRISP. There are gentlemen present here from the Judiciary Committee, and I presume they desire to present some of their views to the committee. I think it would be the proper thing to hear from them first.

The CHAIRMAN. We will hear from the chairman of the Judiciary Committee, Mr. Webb.

STATEMENT OF HON. EDWIN Y. WEBB, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA.

Mr. WEBB. Mr. Chairman and gentlemen of the committee, there are a good many angles involved in this matter, but only one or two about which there might be any controversy at all.

As I understand it, the resolution has directed you gentlemen to investigate and report the facts, which happily are almost entirely of record, composed of the two letters which I sent out in the report, written by Mr. Marshall to the chairman of the subcommittee. I therefore take it that it will be easy to report on that under the direction contained in the resolution.

The CHAIRMAN. Have you those letters?

Mr. WEBB. They are copied in the report. The other angle is to say whether or not the letters are in contempt of the House, and if so, what proceeding should be had, and the power of the House to punish for contempt.

On the question of whether or not the letters are contemptuous, I do not think there is any controversy as to that, when you take into consideration the surroundings at the time the letters were written. As you gentlemen know, Mr. Buchanan on the 14th day of January arose in his responsible place in the House and impeached Mr. H. Snowden Marshall for high crimes and misdemenors and set out some 35 or 40 specific charges. Those charges, upon the motion of Mr. Fitzgerald, were referred to the Judiciary Committee for examination and report.

Shortly thereafter, having previously examined Mr. Buchanan and other witnesses, the Judiciary Committee directed the chairman to ask the House for power to subpœna witnesses, swear them, etc., and to make a further investigation of the charges in this resolution. In consequence thereof, H. R. 110 was unanimously passed by the House which gave the Judiciary Committee or any subcommittee thereof the power to further investigate the charges as set out in this resolution, and gave them power to subpœna witnesses and swear them and take testimony, either here in Washington or at any other place that the Judiciary Committee might deem proper to have the evidence taken—the regular power given committees in all impeachment matters, I may say.

The Judiciary Committee immediately thereafter authorized the chairman of the Judiciary Committee to appoint a subcommittee of three to take this testimony, which was done, I think, on or about the 27th of February. That committee consisted of Mr. Carlin, Mr. Gard, and Mr. Nelson. Immediately thereafter they began their duties as directed by the House. They sat for a week or 10 days here in Washington and subpœnaed a number of witnesses, Judge Maher, United States judge from the southern district of New York, was one of the witnesses, and a number of other men of distinction were brought before the subcommittee and examined.

There were numerous witnesses whose names were furnished to the subcommittee who lived in New York, and the subcommittee thought, as a matter of economy and expedition, that it would be better to go to New York, nearer to the witnesses, in order to hasten

the hearing. Consequently they determined to go to New York, and did go there on the 28th day of February, and opened their hearings in the Federal post-office building in New York City, and, after having sat for five or six days—Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday morning—investigating these charges made against Mr. Marshall, subpœnaing, of course, such witnesses as furnished them by the man accused, Mr. Buchanan.

Necessarily, I can say rather parenthetically here, all these investigations in impeachment charges are in the nature of inquisitorial proceedings; they must be in the nature of the case; it is an ex parte hearing, and may some time seem to the public generally to be a little harsh, but it is the only remedy the people have, the only method they have of getting rid of an unworthy officer, or of an officer who has been impeached by a Member of Congress in his responsible position.

These gentlemen had sat there all the week and the testimony is printed, and if you gentlemen want to go through it, it is at your disposal. On Monday morning there appeared in a newspaper in New York—in the New York Times—an article which, among other things, had this language in it:

> It is the belief in the district-attorney's office that the real aim of the congressional investigation is to put a stop to the criminal investigation of the pro-German partisans.

Mr. STERLING. Is the substance of that article the same as this first letter that Marshall wrote to the committee? He states in that letter that what he claims to have stated to the newspaper man is an article along the same line of his letter?

Mr. WEBB. Yes, sir; the general deductions and reference to circulating the grand jury minutes for the subcommittee to see if any testimony was given before the grand jury. As you understand, one of the charges in the impeachment articles was that Mr. Marshall had corruptly procured from the grand jury in New York indictments against reputable citizens upon no testimony, without having any testimony, or sufficient testimony.

Mr. STERLING. Do Mr. Buchanan's charges that he made on the floor of the House along that line refer to the Buchanan and Fowler cases particularly, or do they claim there were other cases?

Mr. WEBB. They claimed there were other cases.

Mr. STERLING. And they did not intend to cover the Buchanan and Fowler cases at all?

Mr. WEBB. They did intend to cover the Buchanan and Fowler cases.

Mr. STERLING. In the charges?

Mr. WEBB. Yes, sir; Mr. Buchanan came before the committee and stated that was one of them, and he covered them generally because he said there were others. I believe some indictments grew out of what was known as the Rae Tanzer case, where other indictments were found without any evidence, or without sufficient evidence.

That article appeared in the New York newspaper, and that article, a section of which I will read, of course appeared to the subcommittee to be unfair and unjust and untrue, and immediately they began to inquire who the author of the article was, and they discovered it was a young man by the name of Holme, I believe, and he, being in the committee room, they called him on the witness stand and asked

him about this article, and they asked him who in the district attorney's office gave him the information. He declined to answer the question. They asked him if he got the information in the district attorney's office. He said, "Yes; that was the general report around the office." After a long series of questions, which are set out in the report, and he still declining to answer the question, the committee told him they would hold him in the custody of the Sergeant at Arms until further orders. At 4 o'clock and 10 minutes that afternoon they called him back on the stand and reasked him the same questions, and he still declined to answer them, declined to say whether Mr. Marshall was the author of this charge, or who it was, and thereupon the committee admonished him and told him they wanted to be kind to him and not harsh and would turn him loose, discharge him until some further steps might be taken under the laws of the United States. You gentlemen know that the Constitution provides that where a witness refuses to answer a question before a congressional investigating committee, he is guilty of contempt and can be indicted by being reported to the district attorney's office in the District of Columbia by the Speaker of the House or by the Vice President of the Senate.

This occurred on Friday afternoon. On Saturday morning this subcommittee continued its investigation by examining some other witnesses. Upon Saturday afternoon, about 6 o'clock, I am informed, the first letter of date March 4 was written to Mr. Carlin.

Mr. CARLIN. About 3 o'clock.

Mr. WEBB. And I am informed by Mr. Carlin that he knew nothing about the letter until the newspapers in New York called him up to know about it. In other words, the letter had been given to the public press in New York before it was even received by the subcommittee of the Judiciary Committee.

The letter speaks for itself, gentlemen. In my opinion, it is unjust, it is slanderous, it is contemptuous.

Mr. MOON. You are speaking of the letter of March 4?

Mr. WEBB. The letter of March 4 that Mr. Marshall wrote the subcommittee.

Mr. MOON. That you presented to the House?

Mr. WEBB. Yes. The letter is undoubtedly contemptuous, and was written and published for the purpose of expressing the contempt of the writer. Every line of it is contemptuous in the most unfair kind of language, and the fact that Mr. Marshall, at the conclusion of the letter, says, "I propose to make this letter public," and before ever letting the chairman of the committee look over it and see it, it was put in the hands of the newspapers and published all over New York for the purpose of bringing disgrace and contumely and shame on a committee sent to New York by the House of Representatives in the pursuance of one of its constitutional functions, to wit, the most powerful constitutional function probably the Congress has—that is, the power of impeachment. The Constitution says distinctly it is one of the few distinct things provided in the Constitution—that is, that the House shall be the sole originators and triers of impeachment cases.

Mr. LENROOT. May I ask you there—we are directed here to find whether a contempt has been committed. I should like to know

your views as to whether or not in making that finding we are required to pass upon what, if any, basis of truth there may be in the charges made in this letter?

Mr. WEBB. Answering you, Mr. Lenroot, it makes no difference to the committee——

Mr. LENROOT (interposing). I merely wished to get your view as to the law.

Mr. WEBB. I do not think it is necessary to find a basis for it, but I should like you to read over the testimony and find there is no basis for it, if you will.

Mr. GARDNER. Was that testimony taken in New York by the subcommittee?

Mr. WEBB. Yes; and we shall be glad to furnish this committee with a copy of the letter. I have read every line of it, and I want to say that I have been in these inquisitions before, and I have realized myself in questioning witnesses that we have gone a little far. We have not been compelled, there is no law which compels an investigating committee of this sort to observe the rules laid down——

Mr. GARDNER (interposing). May I ask a question in connection with the one Mr. Lenroot propounded a moment ago?

Mr. WEBB. Yes, sir; I hope you gentlemen will ask questions.

Mr. GARDNER. Let us suppose, for the sake of the argument, that the statements made in the letter by Mr. Marshall are true; that the subcommittee had done all the things that he intimated they did in his letter. Being an officer of the Government and holding a high position, would he be justified in writing that kind of a letter, admitting the facts stated therein to be true?

Mr. WEBB. I do not think he would, Mr. Gardner, even if everything he said was true, because the manner in which he writes it, the manner in which he made it public, the contemptuous expressions all through show that even though what he states is true, he purposely and deliberately planned to make his letter full of contempt for the purpose of reflecting upon these gentlemen, bringing disgrace upon them, and if possible driving them out of New York.

Mr. MOON. Will you file with the committee, to be printed with this report, the testimony to which you refer?

Mr. WEBB. I will, Mr. Moon; yes, sir.

Mr. Marshall starts out by saying:

> You are exploiting charges against me of oppressive conduct toward a Member of your honorable body who is charged with a violation of law, and of oppressive conduct on my part toward shysters in the blackmailing and bankruptcy business.

Then he takes up this man Holme's trouble. He is the man who becomes offended because Holme was required or asked to tell if he got his information from the district attorney, and the district attorney behind Holme, it seems, was trying to reflect upon the subcommittee, and when the subcommittee questioned him to find out where he was getting his evidence and the newspaper reporter declined to answer, then Mr. Marshall runs to his rescue with this contemptuous letter. He said:

> I may be able to lighten your labors by offering to resign if you can indicate anything I ever did that remotely approximates the lawless tyranny of your order of arrest of Mr. Holme.

"Lawless tyranny;" there is a man who had published in the newspaper, issued right over the office where these three gentlemen representing the dignity of the House of Representatives were sitting, a charge of slander against them. It was slander.

Mr. LENROOT. Let me ask you right there, is it your view of the law that this subcommittee did have a right to arrest Mr. Holme?

Mr. WEBB. It had the right to detain him in custody, for the present, at least.

Mr. LENROOT. I just wanted to know your view about that.

Mr. STERLING. On that point, Mr. Webb, of course, I have not any doubt but what a committee has the right to detain him in custody; then, I suppose, they should report it to the House, and the House would determine the question as to whether or not the detention should be continued.

Mr. WEBB. I think you are right there, sir.

Mr. STERLING. But at the time Holme refused to answer these questions you were not investigating the charges which Buchanan had made in the House?

Mr. WEBB. That is true, sir.

Mr. STERLING. You think you did have a right into that question and compel witnesses to answer, it being a collateral matter and not of the substance of the investigation?

Mr. WEBB. I will say to you, Judge Sterling, that question has never been decided in the history of this Government. The question never arose before (that particular collateral question), because no committee of the House of Representatives investigating impeachment charges under the highest constitutional prerogative, so far as I know, has ever been assaulted in a manner like this, or ever had occasion to call a man up before them and try to determine from whom he got the insulting information, and especially when the paper stated that it came from the very man whom the subcommittee was investigating.

Mr. LENROOT. Has it been decided that the subcommittee of the House has a right to detain a witness in custody?

Mr. WEBB. No, sir; not that I know of.

Mr. CRISP. In the Kilbourn case, did not the Supreme Court hold that either branch of Congress could deal with a contumacious witness, provided they were authorized to legislate or deal with the matter on which he declined to answer?

Mr. WEBB. That was the point on which the Kilbourn case was decided by Justice Miller. They held, and held only, that in that particular case that the House of Representatives had no authority to appoint a committee to investigate the private matters of a concern, to wit, whether a man held stock in what is known as a real estate pool in the District of Columbia, and consequently his refusal to answer a question and produce books, he was thereafter found in contempt of the House, and incarcerated by the sergeant at arms, was unlawful, the whole business void, and therefore the sergeant at arms liable, but in that very case, they do not say that the House of Representatives has not the inherent power to punish contempt, and especially, as Judge Miller sets out, that whereas his argument may throw some doubt upon the general power of the House to punish for contempt with ordinary representative committees, yet there are certain ques-

tions which they, under the Constitution, specifically are given power to investigate, to wit, election contests. They can punish a Member for improper conduct, and can originate and try impeachment cases.

Mr. STERLING. There are several cases where punishment by the House has been sustained?

Mr. WEBB. Yes, sir; I will cite them.

Mr. STERLING. As to contumacious witnesses, I think in the Kilbourn case, if I remember, the court discharged him because they were trying to investigate a matter over which they did not have jurisdiction?

Mr. WEBB. That is right.

Mr. STERLING. The question arose in my mind as to whether or not this committee, when it had Holme in its investigation, that the article then appeared in the paper after the committee had been appointed was not covered by the committee's commission to investigate.

Mr. WEBB. That is true. That is why I say it is a novel point.

Mr. CRISP. That is why I called attention to the Kilbourn case.

Mr. GARDNER. Judge Sterling, admitting the fact that the subcommittee did not have the right to investigate Mr. Holme or commit him, as it were, would that justify the district attorney in writing the character of letter that he did to the subcommittee?

Mr. STERLING. I will tell you how I feel about that personally. Of course, a man may commit a libel by telling the truth so far as that is concerned, but there is not any use to present a matter to this House; there is no contempt where the libel is the truth. The House would not stand that for a minute.

Mr. WEBB. No; I would not have you do that.

Mr. STERLING. The House would not stand for it, and I think we ought to proceed so we are sure of our ground.

Mr. WEBB. But, gentlemen, leaving out the Holme matter entirely, except as a starting point for Mr. Marshall; leaving out the question of whether or not they had the right to hold him in custody—and by the way, I want to say that the subcommittee never ordered him into the custody of the United States marshal at all; it ordered him to be held by Mr. Gordon, the Sergeant at Arms of the House for a few hours, and later called him on the stand, and then dismissed him. He was in the custody of Mr. Gordon, and they walked around the building together; stayed together, very pleasantly associated together.

He goes on, though, and practically takes up the burden of making this charge against the House of Representatives that this man Holme made in the paper. Now I will leave out Holme entirely.

He says:

> I may be able to lighten your labors by offering to resign if you can indicate anything I ever did that remotely approximates the lawless tyranny of your order of arrest of Mr. Holme.
>
> The supposed justification of your order that Mr. Holme be placed in custody was his refusal to answer the question you asked as to where he got the information on which was based the article which displeased you.

Now, mark you, that article was in the New York Times saying that this whole congressional investigation—saying that it was the belief of the district attorney's office that the real aim of the congressional

investigation was to put a stop to the criminal investigation of the pro-German partisans.

That was not a reflection upon that subcommittee; and if it were, would be a reflection upon the House of Representatives, because, constructively, when the House of Representatives appointed this committee, the power of the House and the dignity of the House itself went to New York. Manifestly, the House can not sit down and hear three or four weeks of testimony in investigating preliminary impeachment charges, and therefore they assign that power to some responsible subcommittee; and when this committee went to New York it had thrown around it the power and protection of the House of Representatives, as lodged in the House of Representatives by the Constitution of the United States.

Mr. MOON. The resolution of the House authorizes the Judiciary Committee to appoint this subcommittee.

Mr. WEBB. Yes, sir; that is set out in H. R. 110, embodied in the report, Mr. Chairman.

There was a direct and awful reflection upon the House of Representatives, and a reflection which is not true, which every man in the House and on the floor of the House knows is not true. It was made for the purpose of bringing disgrace upon that body, upon the House of Representatives, and upon the subcommittee that dared investigate the charges presented by a Member of the House.

Now, Mr. Marshall says, further:

It is not necessary for you to place anyone under arrest in order to get the answers to the question which you asked Mr. Holme, because I can and will answer it. I gave Mr. Holme information, part of which he published and from which he made deductions, so that if your honorable committee has a grievance it is against me and not against him.

That is the man whose conduct the Congress of the United States has solemnly instructed its subcommittee to investigate.

What I told him was about as follows:
I said that your expedition to this town was not an investigation conducted in good faith.

That was contemptuous.

Your expedition to this town was not an investigation conducted in good faith—

That was a direct charge of bad faith on the part of Congress and of the subcommittee—

but was a deliberate effort to intimidate any district attorney who had the temerity to present charges against one of your honorable body.

One of the body of the House of Representatives.

Gentlemen, that language alone was as contemptuous as a man could possibly write, and especially under the circumstances, and with the determination and announced statement in his letter that he proposed to make such contemptuous language public and says this:

I pointed out to him that you, contrary to usual practice, had come here and had held public hearings—

So far as I know in every investigation for the last 10 or 12 years, all hearings have been held publicly. In the beginning of this investigation had in the Judiciary Committee room, the first witnesses were examined in secret session, and I may say to you gentlemen here it was done because we thought there were some witnesses whose

testimony might not be worthy of credence which the committee ought to give an honorable witness, and that testimony was held behind closed doors, and for the sake of H. Snowden Marshall was never made public, and never has been made public. There was the subcommittee and the Judiciary Committee and the House trying to protect him against witnesses that the committee itself did not have entire confidence in, and he rushes into open print and slanders the committee that has theretofore been trying to protect him. I say that all these investigations heretofore have been held in public, so in the Duane case in Florida, so in the Archibald case, so in the Hanford case, so in the Swan case.

Mr. STERLING. Did we not have any secret hearings in the Archibald case at all?

Mr. WEBB. I do not believe we did.

Mr. STERLING. I do not believe we did after we began taking testimony.

Mr. WEBB. We had an executive session around the table and read documentary evidence, but all of the hearings were public.

Mr. LENROOT. The subcommittee held hearings outside of Washington in the Swan case?

Mr. WEBB. Yes; and in other cases.

Mr. GARDNER. You say these hearings behind closed doors were for the protection of Mr. Marshall?

Mr. WEBB. Absolutely.

Mr. GARDNER. Upon the idea that witnesses might make statements concerning his official conduct that would reflect upon him unjustly?

Mr. WEBB. I think I can say that absolutely for the subcommittee. They were aware that among these 50 or 60 witnesses whose names had been given them, we got the idea that a few of them were not entirely responsible, or that their characters might be impeached, whose character had been impeached by members of the Judiciary Committee sitting around the executive board, and for the purpose of not paralyzing the arm of the district attorney's office in New York by testimony which might be regarded as tainted with improper character, some of these witnesses were examined behind closed doors.

May I say that for the subcommittee? If I am in error I want to be corrected.

(Messrs. Nelson and Gard signified their assent.)

He charges the subcommittee of the House of Representatives with bad faith, and then goes on to say:

> I pointed out to him that you, contrary to usual practice, had come here and had held public hearings; that among your witnesses you had invited every rogue that you could lay your hands on to come before you and blackguard and slander me and my assistants under the full privilege of testifying before a congressional committee.

Having read the testimony, every word of it, as taken by the official stenographer in New York, I deny that charge against the subcommittee. It is not true. It is not true that these gentlemen invited anybody. Mr. Buchanan, on the floor of the House, stated to the House that he was a poor man and could make these charges against Mr. Marshall good if he had the power to get witnesses present, and it has been the custom during all the years of you gentlemen's long and honorable carrier that whenever a Member of Congress im-

peaches any civil officer of the United States that he furnishes the names of the witnesses and the House subpœnas them. This subcommittee simply went up there in obedience to the desire of the House to investigate the charges set out by this man Buchanan and for him to furnish the witnesses to be examined. I believe I have stated that this subcommittee of its own initiative has not subpœnaed any witness?

Mr. NELSON. Do you wish an answer?

Mr. WEBB. Yes, sir.

Mr. NELSON. We have not; no witness not suggested by Mr. Buchanan or who requested to be heard, for instance, Mr. Wise.

Mr. WEBB. I think that should be known to the gentlemen of this special committee. They did not go around hunting up testimony, as they had a right to. If they had wanted to, they could have put men to work and hunted up testimony against this man Marshall. But no; they had contented themselves to subpœna and examine witnesses submitted to them by Congressman Buchanan—excepting in one case there was testimony before the subcommittee in New York about a certain matter, and Hon. Henry A. Wise——

Mr. NELSON. Let me qualify that in this much, that when some evidence was given on some certain charge, where the witness mentioned some particular name, and the chairman wished to corroborate that, he would send for that person mentioned in the testimony.

Mr. WEBB. Yes, sir; that is all right. This committee was sitting there and taking testimony and Mr. Henry A. Wise, the predecessor of Mr. H. Snowden Marshall, a very distinguished lawyer in New York City, as you all know, volunteered to take the stand in behalf of Mr. Marshall, you might say. If you read his testimony you will find it is a most magnificent encomium on Mr. Marshall and Mr. Marshall's administration up there, explaining the grand jury, the use of the grand jury, and the case indictments might be found, etc., and the committee heard him voluntarily on behalf of Mr. Marshall, and refused to hear nobody that asked to be heard. He says:

> You invited every rogue that you could lay your hands on to come before you and blackguard me.

The subcommittee has informed me that they do not know of a single man that was examined by this subcommittee who has ever been convicted of roguery or of larceny.

I will tell you what they did do, gentlemen. In the Rae Tanzer case, and in that case without discussing the merit of it, I might say that Hon. Martin Milton, at one time a very distinguished Member of this House, known as a great lawyer, stated before the subcommittee here in Washington about 10 days ago that when Mr. Marshall took jurisdiction of the Rae Tanzer case he wrenched the Federal jurisdiction. Mr. Ripton, a witness, Judge Maher, Hon. J. B. Stanchfield were witnesses—some of the highest class men in the United States—and many of them testified gladly to the good character and the high standing of Hon. H. Snowden Marshall.

Mr. STERLING. Were any of the witnesses persons whom Marshall had prosecuted?

Mr. WEBB. Yes, sir; necessarily so. There was a man by the name of Crocker, I believe, a lawyer.

Mr. GARD. Several of them were.

Mr. WEBB. Yes.

Mr. GARD. That was the Oppenheimer case.

Mr. WEBB. It was stated that after indictments had been quashed that the district attorney would go up to the grand jury and get another indictment; sometimes got six or seven, but they had to be investigated. It was charged that he showed that malicious and persistent feeling toward these men not consistent with a good officer. They did have to examine him, of course. But the subcommittee knew he had been indicted and what he was indicted for, and the members of the subcommittee were big enough and broad enough to take into consideration the circumstances and were able to weigh the testimony.

I was going to tell you what was done in the Rae Tanzer case. A man by the name of Stafford, who was indicted for perjury——

Mr. STERLING. What is that case you were speaking of?

Mr. WEBB. I think I will explain it briefly. There was a little woman by the name of Rae Tanzer who was taken to a town in New Jersey and there she was——

Mr. STERLING (interposing). Under the Mann Act?

Mr. WEBB. Not under the Mann Act, but a gentleman, who said his name was Oliver Osborn, spent a night with her and abused her. Later on she wrote letters and she finally got no word from him, and she located James W. Osborn and charged him with being Oliver Osborn, and she went then to consult four or five law firms, and could not get anybody to represent her, and finally got Slade & Slade to represent her, and Slade & Slade brought a civil suit in the civil court of New York for breach of promise, seduction, etc., and while that civil suit was pending in the United States court, under Mr. Marshall's jurisdiction and with Mr. Marshall's consent and helping to arrange it, Hon. James W. Osborn, being then in the employ, I believe, of the United States Government in prosecuting the New Haven Railroad cases, they issued a warrant for the Slades and for Rae Tanzer and for Rae Tanzer's two sisters, and some other witnesses, I believe.

Mr. NELSON. Mr. Stafford?

Mr. WEBB. Mr. Stafford, who was clerk of the hotel, who identified James W. Osborn as being the man who spent the night there.

Mr. NELSON. And the private detective?

Mr. WEBB. Yes. They indicted Slade for conspiracy to obstruct justice in a United States court.

Mr. GARD. It is fair to say that the matter arose in this way: Rae Tanzer, the complaining person in the civil case, was arraigned before Commissioner Holton, United States commissioner, on the specific charge that she had written a letter to James W. Osborn, which they charged was an abuse of the mails, and an attempt to use the mails for the purpose of obtaining money under blackmail and unlawfully defraud. The letter hardly bears such an interpretation, but that was the start of the prosecution.

Mr. WEBB. That was the hook upon which they hung the jurisdiction of the United States.

Mr. GARD. Yes; that was what they hung the jurisdiction of the United States court on. Then all other indictments were returned for conspiracy and perjury and things like that; they put everything in,

and everybody in, the lawyers and her sisters, and everybody else; they indicted them for conspiracy and some for perjury, but that was the original jurisdiction and the writing of the letter.

Mr. WEBB. And during all these indictments, cross indictments, and conspiracy charges lying up there in New York from the United States district attorney's office they indicted the man by the name of Stafford for perjury, and they convicted him.

Now that man Stafford was subpœnaed here as a witness. His name was given to the committee by Mr. Buchanan, and although he had been indicted, there was no reason why he should not testify. But he came down and the committee would not hear him; they said, "We will not swear you; you have been convicted of perjury; you can send a statement or an affidavit down here if you want to." That is how that subcommittee was protecting Mr. H. Snowden Marshall.

Mr. GARD. That was even after this letter was received.

Mr. WEBB. Yes.

Mr. NELSON. On that point let me tell you also for the record that another gentleman came to the committee and asked to be heard and said he had a very severe case of oppression on the part of Mr. Marshall. He was asked if he had been convicted. He admitted he had, and the chairman informed him that we could not hear him; that he might file his statement in the form of an affidavit, and that was done.

Mr. WEBB. So I say his charge against this House and this subcommittee that "they have invited every rogue they could lay their hands on to come before the subcommittee and blackguard and slander me (Marshall)," I say that is untrue.

A little further on he says:

I told him that you were traveling around—

That is another contemptuous remark—

I told him that you (the subcommittee) were traveling around in your alleged investigation of me with Buchanan's counsel, Walsh and David Slade, in constant conference with you. I said that I believed that every word of the evidence, whether in so-called secret sessions or not, had been placed at the disposal of these worthies, and that I would be just as willing to give the grand jury minutes to a defendant as to give them to your honorable subcommittee.

Mr. MOON. How was that, he would as soon give——

Mr. WEBB. He would "as soon give the grand jury minutes to a defendant as to give them to your honorable subcommittee."

Mr. MOON. These rogues?

Mr. WEBB. Yes; Buchanan and those others indicted with him.

Mr. STERLING. He means by that that he thought the committee would turn them over anyhow to Buchanan's lawyers?

Mr. MOON. Oh, yes; it is to Buchanan's lawyers instead of these other parties he is speaking of?

Mr. STERLING. Yes. To what extent were Walsh and Slade present?

Mr. WEBB. They were present most of the time when they wanted to be, but I will say, gentlemen, there is nothing unusual about that, so far as I know. Mr. Marshall could have been present himself. These gentlemen, in investigating the Dayton charges, there were two lawyers pressing the charges against Judge Dayton.

Mr. STERLING. Did they take part in examining witnesses?

Mr. WEBB. They did. They started out with this method (it was cumbersome, as you will see), by requiring Mr. Buchanan or Mr. Buchanan's counsel to write out each question they wanted to ask the witness. You can see that would have drawn out the examination for six or eight months, so finally the members of the committee said, "Just go ahead and ask a few direct questions yourselves. We sit here, we understand the situation," and that was done in this case.

I should like you gentlemen to read the testimony and see there was nothing—that there were no improper questions asked by this subcommittee of these witnesses in New York, and they do not seem to me to have allowed anybody to ask improper questions.

Mr. LENROOT. I notice in the paragraph preceding that which you have just read the charges that this subcommittee attempted to secure the minutes of the grand jury.

Mr. WEBB. I can make a statement now on that question. I was just taking up what I thought to be contemptuous language. The truth is that one of the compelling reasons why we went to New York was that these charges having been made and sent out over the country, these charges not only against Buchanan but charges that other indictments had been procured by Mr. Marshall before the grand jury without sufficient evidence, or without any evidence, and these gentlemen thought they would go up there and take a private look at these grand jury minutes and come back, never dreaming of allowing Mr. Buchanan or his counsel to ever put an eye on those minutes; and when we got there we asked Mr. Marshall if he had objections to submitting the grand jury minutes. Mr. Marshall replied that he would have to consult the Attorney General; and he did telegraph to the Attorney General, and the Attorney General wired back that he did not think the committee ought to ask or demand the minutes of the grand jury.

I can say there are ways in which you can get the minutes of the grand jury in other trials; and I am not so sure, gentlemen, I have advised all through this hearing the members of the subcommittee not to make the grand jury minutes public, not to insist on their production, and not to allow any testimony to be presented in this hearing that was presented before the grand jury, but to confine their hearing, which they did, to the question as to whether or not any testimony was taken upon which the grand jury might act. Not the sufficiency of it, but was the testimony had; and that was the line on which these gentlemen pursued this entire investigation up there. When Mr. Marshall presented the telegram to the members of the subcommittee, that was the end of the grand jury minutes. They never issued subpœna duces tecum to get the minutes at all: but I think if any court in the land has the power to compel the production of the minutes of the grand jury in a case, this court has got that power. It is the highest court in the world. But they did not exercise that power. They never issued a subpœna duces tecum, and when Mr. Marshall presented this telegram from the Attorney General, that was the end of it.

Mr. NELSON. We never made it public. We had a little private talk with him, but he gave it publicity.

Mr. WEBB. Yes; this newspaper article is headed: "The district attorney refuses Buchanan evidence." That is the heading of this article I have been quoting from. He went out and gave it to the

newspapers, but the rest of it the subcommittee never made public; any part of it.

He said:

I told him you were traveling around in your alleged investigation of me with Buchanan's counsel, Walsh.

I believe I have read that. I will now read one more extract from this letter:

I said that it was incomprehensible to me how your honorable subcommittee should rush to the assistance of an indicted defendant; how you had apparently resolved to prevent prosecution by causing the district attorney in charge to be publicly slandered.

I told him that I would not permit the prosecution of the persons whose cause you had apparently espoused to be impeded by you; I said that if you wanted the minutes of the grand jury in any case you would not get them as long as I remained in office.

Now I will read the last paragraph:

It is amazing to me to think that you supposed that I did not understand what you have been attempting to do during your visit here. I realized that your effort was to ruin me and my office by publishing with your full approval the complaints of various persons who have run afoul of the criminal law under my administration. Your subcommittee has endeavored by insulting questions to my assistants and others, by giving publicity and countenance to the charges of rascals, and by refusing to listen to the truth and refusing to examine public records to which your attention was directed to publicly disgrace me and my office—

And so forth. "I propose to make this letter public," and does so, and does it before it gets to the hands, so I am informed, of the subcommittee itself.

Mr. STERLING. Did the subcommittee ask Mr. Marshall for the grand jury minutes in any other cases than the Buchanan case?

Mr. NELSON. Yes.

Mr. WEBB. All the cases covered by the charge.

Mr. NELSON. This was the conversation, if you wish it. The difficulty was to ascertain the truth about these things, and knowing that it was the practice in New York to have a stenographer in the grand jury room, and that this public official had those grand jury minutes, we thought that, being a representative of the highest court in the land on this matter, we had a right to inspect those grand jury minutes; at least we would submit the request to him. So he was asked to come before the committee, and I may say that, while these things are little incidents, they show the hostility, the atmosphere charged with hostility in that courthouse so far as this district attorney's office was concerned. It was difficult for the Sergeant at Arms of the House to get to him. He will testify here that he had to plead with one of his subordinates in order to get to him. He will tell you the conversation. Finally he did come up, and then the Sergeant at Arms finally persuaded him to come up and see the committee.

Mr. Marshall came up. I will not attempt to picture to you the kind of air he assumed and the arrogance. Mr. Carlin tried to introduce him, having met him before, to some of the members of the committee, but his hostility was such that any courtesies were impossible; so Mr. Carlin, the chairman of the subcommittee, tried to explain to him that we were a congressional committee trying to ascertain these facts; that a Member had been accused, and that it was difficult to ascertain these facts without seeing the grand jury minutes.

We asked him if the grand jury minutes were printed. He said they were. Mr. Carlin asked him if he would submit them to the members. In a haughty way he said that he would take it up with the Attorney General. He pretended not even to have read the charges. I tendered him the Congressional Record. He said, "Send it down." He would not take it down.

Mr. WEBB. You mean the Congressional Record?

Mr. NELSON. The Congressional Record, where the charges were in detail.

Well, that was the interview in which we also suggested to him that he had the perfect right to be present, either by counsel or himself. He told us he would not want anything to do with it and he left, as he came, with that superb, arrogant manner of his. Well, it was so ludicrous that we were of course inclined to laugh at the gentleman's arrogance.

Mr. STERLING. Did you ask him the question as to whether there was any testimony before the grand jury?

Mr. NELSON. This man——

Mr. STERLING (interposing). Mr. Buchanan's charge is that indictments were found where there was no evidence.

Mr. WEBB. No evidence in one case and not sufficient in another.

Mr. STERLING. Did you ask him whether or not there was any evidence?

Mr. NELSON. We did not ask him, because he was the gentleman against whom charges were preferred, and it is not customary, you know, to ask the respondent or the defendant in the case. It was not done in the Wright hearings. We never did that. That is a matter for him to volunteer, if he wishes to.

Mr. WEBB. I understand, Judge Nelson, that thereafter he came before you informally.

Mr. GARD. This conversation was entirely executive; did not go into the record; was not uttered in the presence of a stenographer, and we said this to him. The chairman said to him—after the committee had conferred about it, the chairman said to him this: "Have you read the charges preferred against you?" He said no, he had not read them; had not paid any attention to them. We said, "Some of the charges are that you have used your office to return indictments against persons without any testimony. We should like to have a talk with you as to whether you would be willing to submit to the committee such minutes of the grand jury as may be called for, or whether you would prefer us, if we choose, to call for the minutes, to ask for them upon the authority of our committee." That was the extent of our conversation. He said, "Well, I will take that up with the Attorney General," which I think was very proper. Then he became, as Mr. Nelson said—his manner was hostile at that time, had been hostile all the time. He said, "If you want to know anything, why do you not ask Buchanan what he did with this money that he got from such and such a place." I have forgotten the source. We did not make any reply to that, because that was not for us to investigate.

Mr. NELSON. We did ask—the chairman did ask for both minutes; suggested that not only the minutes in this indictment of Buchanan, but also these in the Rae Tanzer case, would be desirable, and explained that it would so materially assist our labors if we could say

there was some evidence. He also said that we were representatives of the Government; that we assured him it would be private, strictly private, and that no one else would be permitted to see them; and with that conversation we left it to him to seek information from the Attorney General, and he promised to reply promptly. Now, mind you, there was a sting of insult in the very reply we got. These are minor matters, but they simply show the hostile attitude of that office all the way through.

Mr. Carlin, the chairman, had tried to explain to him that the House seemed to be particularly concerned with ascertaining the fact whether a Member of the House, in his official capacity, had been indicted for things done in the House, and that we should like to ascertain whether they were true or not; whether there was some evidence. Mind you, when he replied—and I do not believe it is in here—but after tendering him the record he sent it back with a letter saying that he returned it with thanks, etc. Then he said he had looked these charges through and he had not found anything there along the lines suggested by Mr. Carlin, therefore it must have been evolved in the consciousness of some person or persons, the implication being direct that some one had told him something that was not true. That is just suggestive of the treatment we received all the way through.

Mr. LENROOT. At what point in this proceeding was the request for the minutes of the grand jury preferred?

Mr. NELSON. In the afternoon of the first day.

Mr. LENROOT. Of the meeting in New York?

Mr. NELSON. In New York; yes, sir.

Mr. GARD. Right after we organized.

Mr. NELSON. We had one or two witnesses, then decided that this was a laborious thing to fish around the outside and try to find out whether there was evidence or not; that here was a public document. We knew they used these grand jury minutes in the State of New York frequently, and for purposes of justice it was always admissible to bring them out. We were accredited officers of the law; this was the high court of impeachment obviously this officer could give us access to such documents by which we could at once discharge our duty and say to the House, "Yes; there is evidence."

Mr. LENROOT. You say there were two charges in relation to this evidence—one that there was no evidence and the other that there was not sufficient evidence. I want to ask whether your subcommittee decided that it was proper to investigate the question of the sufficiency of the evidence and desired it for that purpose?

Mr. NELSON. No; I did not mean to imply that.

Mr. LENROOT. Did you decide that it was not?

Mr. NELSON. We did not decide, certainly——

Mr. LENROOT (interposing). So far as this inquiry in New York was concerned, I mean.

Mr. NELSON. We went along on the plan that we would ascertain whether or not there was probable, prima facie evidence and determine whether this man had acted arbitrarily or not, or whether he had supplied evidence of such a character that it would be prima facie in an indictment of a Member of Congress.

Mr. LENROOT. Did you then have in mind determining whether or not the grand jury was warranted if the evidence was sufficient

to warrant the grand jury in making the indictment, or whether there was any evidence?

Mr. NELSON. No; we did not attempt to weigh the evidence in the sense of determining it was sufficient. We never had that in mind; at least it never occurred to my mind, but merely to determine this, whether this man had acted arbitrarily, whether there was evidence of such a character to show that he had it in good faith, and not simply retaliated against a Member of Congress for what he did in the House.

Mr. WEBB. On that point I want to state to the committee——

Mr. NELSON (interposing). You will find in the evidence, if you will read it, that that was in my mind. The thing I was concerned about, gentlemen, was whether a Member of Congress had been questioned in this way for things done in the House. Though I thought, when we had the grand jurors before us, not to ask as to the evidence, but to find out whether they knew of this indictment, whether that was talked of in the grand jury—I mean this impeachment of Mr. Marshall; whether that was talked about in the grand jury; what the methods were, whether they had given them a fair chance or not; whether he had simply been indicted with a mass of fellows and in what way they had handled the matter. We did not go into the evidence. We would not permit any questions that would tend directly to ask what the evidence was. It was a very difficult matter to handle, so we thought if we could get the grand jury admitted we could ascertain in a moment, but being denied we did nothing further in the matter.

Mr. GARD. As far as my own opinion is concerned, I am very frank to say to you that I think the subcommittee was entirely without authority to weigh the evidence or consider what the evidence should be; that it was limited, necessarily, to whether there was any evidence or any approximate evidence which would authorize an indictment. In other words, a distinction between returning an indictment upon evidence and an indictment by coercion, without evidence.

Mr. WEBB. On that point I wish to say that on the 14th day of December Mr. Buchanan arose in the House and impeached Mr. Marshall, charging five or six different charges. On the 28th day of December, 14 days later, the indictment against Mr. Buchanan was found; then on the 12th day of February Mr. Buchanan was reimpeached, you might say, to another set of formal articles of impeachment.

Mr. GARD. Amended charges?

Mr. WEBB. Amended charges, and I think he intimated on the floor of the House—it was certainly discussed around the table—that this indictment of the 28th, of Mr. Buchanan, was or might have been—looked like it was in retaliation of Buchanan's impeaching measure on the 14th day of December, and that is why these gentlemen wanted to satisfy the House that there was no such fact in the district attorney's conduct, or that it was a fact. That is why, I imagine, they were asking these questions.

Now, gentlemen, I do not believe, as far as I am concerned, that I have a particle of feeling against Mr. Marshall, and you gentlemen have not, and no member of the committee has. I started out in this whole matter with the very highest regard for him. I had heard and knew from what a good many said that he was a man of high

character, a great lawyer, and stood splendidly at the bar in New York. In fact it was a pleasure to many of us to hear great lawyers give him that kind of reputation.

I am talking around the board now, but the members of the Judiciary Committee, and I might say a majority of people, probably an overwhelming majority of people, feel the same way toward Mr. Marshall; and I am going to say further that I thought from the very beginning that it was very improbable they would ever fix anything on Mr. Marshall to cause the committee of the House to impeach him. That was the attitude I can say of the chairman, and I believe that was in the breasts of all the members of the committee when they started out to investigate these charges by direction of the House.

Gentlemen, as to whether or not this is a contempt is entirely within your breasts. I know of no other court, a little police court down here, or even a magistrate's court, or any other inferior court, while hearing the testimony in regard to the defendant, if such judge should receive such a letter with the notification to the judge who got it that the writer expected to make it public for the purpose of disgracing the judge that was investigating him, I know what would happen to him. They would put him in jail and put him there for a good long term.

Mr. GARNER. In order to make the record perfectly clear, in view of Mr. Marshall's statement that, "I said that your expedition to this town was not an investigation conducted in good faith," I should like to ask the subcommittee whether the investigation was being made in good faith or not?

Mr. WEBB. Entirely so.

Mr. NELSON. Yes.

Mr. GARNER. And again he says:

I said that it was incomprehensible to me how your honorable subcommittee should rush to the assistance of an indicted defendant.

Were you gentlemen rushing to the assistance of an indicted defendant?

Mr. GARD. We were not. We had no idea of doing anything except seeking to obtain information.

Mr. NELSON. In answer to your question, I want to call attention to the fact that the Committee on the Judiciary resisted the resolution of the House to forthwith instruct the committee to begin the investigation. The chairman made a plea, and I did myself, asking you first to submit the matter to the Committee on the Judiciary, so we might make a preliminary investigation in regard to the facts, and it was only because we had the overpowering sentiment of the House and Mr. Buchanan's added facts and specific charges—he made 40, instead of a few—that led the committee to look into this matter. And, if I may add, I personally requested the chairman not to be appointed on that committee, because I had once served on an impeachment committee for three months, and I knew it was a very laborious and irksome task.

Mr. GARDNER. He says:

You had apparently resolved to prevent prosecution by causing the district attorney in charge to be publicly slandered.

Had you gentlemen resolved upon any proceedings?

Mr. NELSON. Of course not.

Mr. WEBB. No.

Mr. GARDNER. I merely asked that, that it may go into the record directly.

Mr. WEBB. Yes; we understand.

Mr. CRISP. Is that necessary? Will not the record show, will not the resolution show, that these gentlemen were acting in pursuance of the direction of the House to make this investigation?

Mr. WEBB. Permit me to go a point further. I want to give you some citations on the law, if you will permit me. Whenever you gentlemen are wearied I will quit. I have taken more time than I intended to take, but that has come about through questions propounded by the members of the committee, and I am glad you asked questions; that is the best way to elicit information. I hope you will keep it up as long as I am talking.

As I said, it is entirely for this committee and the House to pass upon what is contested, and here is what the Supreme Court says in the case of Anderson *v.* Dunn. You will find the report in 6 Wheaton, written by Mr. Justice Johnson, one of the justices of that court, a great justice, and Judge Marshall. Here is what they say about the contempt of the House:

> Nor would their situation be materially relieved by resorting to their legislative power within that district. That power may, indeed, be applied to many purposes and was intended by the Constitution to extend to many purposes indispensable to the security and dignity of the General Government, but they are purposes of a more grave and general character than the offenses which may be denominated contempts and which, from their very nature, admit of no precise definition. Judicial gravity will not admit of the illustrations which this remark would admit of. Its correctness is easily tested by pursuing, in imagination, a legislative attempt at defining the cases to which the epithet contempt might be reasonably applied.

As I said a while ago, Crocker, in section 2, paragraph 5, says:

> And the House of Representatives shall have the sole power of impeachment.

There have been, from the year 1800, witnesses and slanderers of the House and the Senate punished for contempt by your body, up to the time Mr. Glover was punished for an assault upon Judge Sims; but every one of these cases arose out of the general power of the House and the Senate, as set out in Dunn *v.* Anderson, to punish for contempts against the body. There never has been in the history of this Government a plain, straightforward case of contempt under an indisputable power of Congress, and that is the sole power of impeachment. There the Constitution makes Congress the highest court in the world, as it says in one case it is the grand inquisitor of the Nation.

Gentlemen, I want to submit to you this: If, whenever the House of Representatives, in pursuing its constitutional prerogatives, investigating officials of the country, who may be bad or good; if you have not the power, not only to send your subcommittees and committees to investigate charges made by a Member of the House, and protect that committee, wherever it goes, with all the dignity and authority that any committee or court ought to have, why, then, the power of impeachment is nothing but a farce in the hands of the House of Representatives.

Mr. STERLING. I have no doubt but what a contempt committed against a committee would be a contempt committed against the House.

Mr. WEBB. That is the point I am arguing, Judge Sterling. As I said a while ago, when this committee went to New York it went there as the House of Representatives.

Mr. STERLING. It was the House, acting as such; it was its authorized agent.

Mr. CRISP. I do not suppose there is any difference of opinion in the minds of the committee as to the inherent right of the House to punish for contempt.

Mr. STERLING. I do not think there is any doubt about that.

Mr. WEBB. If there is any doubt about it I want to refer you to this celebrated case of Dunn *v.* Anderson, where the court distinctly says, as Judge Crisp has suggested, that it has the inherent power that every representative body has, the right of self-protection and the right to repel and punish insult to the dignity of that body. But that case even arose not in such a clear case as the impeachment process; it arose because a witness had refused to answer a question, or had made some slanderous charge against the House of Congress or the Members, or had attempted to bribe a Member, or had published the Journal of the Senate, contrary to the rules of the Senate, or had charged that in the sugar schedule of the tariff act that Senators were corrupt. In all of those cases both the House and the Senate used the inherent power to punish for contempt. And the courts say that of necessity that power exists.

But even in Kilbourn *v.* Thompson (103 U. S., 168), and in some of the reasoning in Dunn *v.* Anderson, they say there is no doubt about it in impeachment matters; and in trying election cases you do not have to imply power. The Constitution expressly gives the authority to Congress to make this impeachment investigation. And Judge Marshall, in the case of Marlboro *v.* Maryland, I believe it is, says that wherever the Constitution gives the Congress the power to do a certain thing, all things that are necessary to carry out that power go with it incidentally, and one of those powers is the power either to protect itself from insult and assault by contempt proceedings.

Mr. LENROOT. With reference to this matter of punishment, you are familiar with the Duane case, are you not?

Mr. WEBB. Yes, sir.

Mr. LENROOT. As I recollect the Duane case, so far as the punishment is concerned, they instructed the arrest——

Mr. WEBB (interposing). The Vice President?

Mr. LENROOT. No; the President, I think, in that case, was instituting the proper prosecution. I do not find there was any statute then with reference to the Constitution for refusal to testify.

Mr. WEBB. No; that was passed in 1857.

Mr. LENROOT. Now on what theory, have you thought of it, did the Senate in that case not exercise its own power of punishment, but passed it into the judicial branch of the Government?

Mr. WEBB. I am not sure, but——

The CHAIRMAN. Was that the Duane case?

Mr. LENROOT. Yes.

The CHAIRMAN. That was punished by the Senate, and Duane was confined 30 days for the printing of that article in the Aurora.

Mr. NELSON. I remember that distinctly, if I may answer.

Mr. LENROOT. Perhaps I am mistaken.

Mr. NELSON. No; you are correct. There was the contempt by publication, and the Senate took jurisdiction, brought him to the bar of the House, and there was an indictment; he refused to testify, so he was held for about 30 days as a contumacious witness; then toward the end of the session of the Senate—the last day—it was obviously too little time to act upon it, so they simply disposed of the case by adopting—requesting the President to direct the law officer to bring action in the courts, and the court sent him to jail for 30 days and assessed the cost upon him. The answer to your question is it was the last day and they had no further time, and that was the only way of disposing of it.

Mr. LENROOT. Then Congress has no power to punish beyond the term?

Mr. NELSON. Well, the Senate's term is a question of doubt. But let me emphasize this fact, that in that case you see the three branches of the Government have cooperated in punishing for contempt of a branch of the Congress.

Mr. WEBB. Here is what is said in the Duane case:

The question of the power of the Senate to punish for contempt arose in 1800 in the case of William Duane over a publication in the General Advertiser or Aurora, which was found to be false, defamatory, scandalous, and malicious, and Duane was found to be in contempt of the Senate. He appeared before the Senate in response to first notice but failed and declined to appear when ordered at a second date. This being at the end of the session, on the last day of the session he was ordered prosecuted by the courts of law, and was prosecuted and punished.

Here is what Senator Sumner says. He even says the House has more authority in a case of this sort than the Senate. He said, in 1860:

To the House of Representatives are given inquisitorial powers expressly by the Constitution, while no such powers are given to the Senate. This is expressed in the words, "the House of Representatives shall have the sole power of impeachment." Here, then, obviously, is something delegated to the House, and not delegated to the Senate—namely, those inquiries which are in their nature preliminary to an impeachment—which may or may not end in impeachment; and since, by the Constitution, every "civil officer" of the General Government may be impeached, the inquisitorial powers of the House may be directed against every "civil officer," from the President down to the lowest on the list.

This is an extract from Senator Sumner's speech in the Senate.

Now, I want to read another case. This is the most celebrated case ever written, in my opinion, of the power of the House to punish for contempt. It was written, as I said a while ago, by a court composed of such distinguished men as Judge Story and Judge Marshall. I will just quote one or two extracts here:

This result is fraught with too much absurdity not to bring into doubt the soundness of any argument from which it is derived. That a deliberate assembly, clothed with the majesty of the people and charged with the care of all that is dear to them; composed of the most distinguished citizens, selected and drawn together from every quarter of a great nation; whose deliberations are required by public opinion to be conducted under the eye of the public, and whose decisions must be clothed with all that sanctity which unlimited confidence in their wisdom and purity can inspire; that such an assembly should not possess the power to suppress rudeness or repel insult is a supposition too wild to be suggested.

Mr. MOON. Is that Justice Johnson's opinion?

Mr. WEBB. Yes, sir. That opinion is full of just such expressions as that.

Mr. STERLING. How did that case come before the court?

Mr. WEBB. Suit brought against the Sergeant at Arms. The Sergeant at Arms had Anderson, a witness, in custody, and it came up collaterally. They have held that in a direct order of the House for the arrest of a person the courts have no jurisdiction to take him out of the custody of the House, and can only be brought up collaterally, and not directly.

In Kilbourn *v.* Thompson, which I referred to a while ago——

Mr. STERLING. Was that suit for false imprisonment?

Mr. WEBB. Yes, sir; that was what Kilbourn contended, that it is a case of false imprisonment, Kilbourn refusing to answer certain questions put to him by the House of Representatives concerning the business of a real estate partnership, concerning holdings of real estate, a real estate pool.

The powers of Congress itself, when acting through the concurrence of both branches, are dependent solely on the Constitution. Such as are not conferred by that instrument, either expressly or by fair implication from what is granted, are "reserved to the States respectively or to the people." Of course, neither branch of Congress, when acting separately, can lawfully exercise more power than is conferred by the Constitution on the whole body, except in the few instances where authority is conferred on either House separately, as in the case of impeachments.

There, this judge, in Kilbourn *v.* Thompson, points out that the House of Representatives has more power than Congress combined has, because the Constitution confers that power solely upon the House of Representatives, and at other places in this same decision they are referred to, the great power of impeachment, as authority that is not doubted at all.

If there is any doubt about the attitude of the Supreme Court on this question, since the opinion of Kilbourn *v.* Thompson, there has another case arisen, the Chapman, which you will find reported under title "In re Chapman, petitioner, in 166 U. S., 661," and here again Chief Justice Fuller, writing the unanimous opinion of the court, in which Judge Harlan concurred——

Mr. NELSON. Justice White was on the court, too?

Mr. WEBB. Yes; reiterated the statement that the House of Representatives has the inherent power to punish for contempt.

This case arose in this manner. This man Chapman was indicted for refusing to answer questions and was convicted, but in 1857 the House of Representatives—Congress, rather—passed a law making it a misdemeanor for a witness to refuse to answer questions. When this case came to the Supreme Court, Chapman's counsel took the position that Congress, having passed that law, divested itself of the power to punish for contempt, because there could only be one offense, and if Congress was going to let the courts punish for refusing to answer questions, then the House itself could not do it.

This is what the court says:

While Congress can not divest itself or either of its Houses of the inherent power to punish for contempt, it may provide that contumacy in a witness called to testify in a matter properly under consideration by either House, and deliberately refusing to answer questions pertinent thereto, shall be a misdemeanor against the United States.

Although that is done, the House and Senate still have the inherent power to punish for contempt, etc.

Under the Constitution the Senate of the United States has the power to try impeachments; to judge of the elections, returns, and qualifications of its own Members,

to determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member; and it necessarily possesses the inherent power of self-protection.

The refusal to answer pertinent questions in a matter of inquiry within the jurisdiction of the Senate, of course, constitutes a contempt of that body, and by the statute this is also made an offense against the United States.

The history of congressional investigations demonstrates the difficulties under which the two Houses have labored, respectively, in compelling unwilling witnesses to disclose facts deemed essential to taking definite action, and we quite agree with Chief Justice Alvey, delivering the opinion of the Court of Appeals, "that Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legitimate functions"; and that it was to effect this that the act of 1857 was passed. It was an act necessary and proper for carrying into execution the powers vested in Congress and in each House thereof. We grant that Congress could not divest itself, or either of its Houses, of the essential and inherent power to punish for contempt, in cases to which the power of either House properly extended: but, because Congress, by the act of 1857, sought to aid each of the Houses in the discharge of its constitutional functions, it does not follow that any delegation of the power in each to punish for contempt was involved, and the statute is not open to objection on that account.

Nevertheless, although the power to punish for contempt still remains in each House, we must decline to decide that this law is invalid because it provides that contumacy in a witness called to testify in a matter properly under consideration by either House, and deliberately refusing to answer questions pertinent thereto, shall be a misdemeanor against the United States, who are interested that the authority of neither of their departments, nor of any branch thereof, shall be defied and set at naught.

Gentlemen, that is all I care to say there. I have got a mass of matter here, but I want to refer you gentlemen to a recent report so ably presented by Judge Davis and Judge Crisp and the other members of that subcommittee.

Mr. CRISP. Judge Nelson?

Mr. WEBB. And Judge Nelson. They discussed the power of the House to punish for contempt. It is the only copy I have.

Mr. LENROOT. I should like to ask, if you are through with your main argument, one or two questions upon the resolution before us. Were precedents followed confirming this resolution?

Mr. WEBB. I think so.

Mr. LENROOT. What I have especially in mind, the resolution which upon its face seems to delegate to this committee the power of finding the fact.

Mr. WEBB. Yes, sir.

Mr. LENROOT. Namely, the contempt.

Mr. WEBB. I think that is almost the resolution that is set out in the Sims-Glover case.

Mr. LENROOT. Was it the thought that this committee will find the fact—that the House has delegated to this committee its power over the subject?

Mr. STERLING. Do you say finding the fact, or reporting the fact?

Mr. LENROOT. Finding the fact.

Mr. WEBB. That is the same as reporting.

Mr. STERLING. I do not believe it is.

Mr. MOON. Then we want to report the procedure.

Mr. LENROOT. And the procedure, and in case they find a contempt has been committed to the end that the privilege of the House may be maintained.

Mr. NELSON. In the Sims case we found as a fact——

Mr. WEBB. Here is what was said:

Resolved, That a committee of five Members be appointed to investigate * * * for the purpose of ascertaining the facts, etc.. that said committee shall have power to send for persons and papers.

Mr. LENROOT. Is it your idea that this committee shall find the fact, and that it shall then be conclusive upon the House, or the House itself, upon the proper matter getting before the House, will pass upon it?

Mr. WEBB. I think undoubtedly the House wants this committee to make a finding of fact. Of course, no finding of fact will be binding upon the House if it wants to disregard it, but I think the House wants a finding of fact, and I think that is the course which has been pursued during years past.

Mr. STERLING. In that Glover case the committee recommended and set out the method of procedure, and the House followed it.

Mr. LENROOT. In some of the cases I notice in the reports, after finding the fact they set out the procedure by directing or recommending the method in which the trial shall go on in the House: questions to be asked by the Speaker, and so on. Whether it is necessary for us to go that far or not I do not know.

Mr. CRISP. We set that out. I remember a finding of facts was read to Glover when he was brought before the bar, and the Speaker asked him if he desired to be heard, by himself or attorney, and he admitted the facts, and the whole procedure was set out.

Mr. MOON. Where they do not admit the facts the procedure should then go further and show the manner in which the trial should be held.

Mr. STERLING. I know one or two instances where the trial was had before the House. It would be perfectly proper to refer it to a committee.

Mr. LENROOT. I think that would be true. I was wondering whether that was the thought in the mind in this resolution, or whether it was merely a recommendation of the committee to go before the House.

Mr. CRISP. The House practically refers the contest of the seating of its own Members to a committee. The House does not take up the question of facts there. For instance, the Election Committee finds all facts, then makes a report.

Mr. LENROOT. It goes to the method of our report, whether we report and that report is sustained, or whether the House itself shall have the right.

Mr. WEBB. Now, Mr. Chairman, Judge Nelson and Judge Gard are here.

Mr. MOON. We shall be glad to hear from both of them. Which one of the gentlemen will address the committee?

STATEMENT OF HON. WARREN GARD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO.

Mr. GARD. I merely desire to state, gentlemen, that, despite the fact the letter was sent to the subcommittee, and incidentally against the whole House, by Mr. Marshall, district attorney for the southern district of New York, that I feel that I can be so impartial as to return

an honest expression of opinion upon the evidence submitted, upon the facts in the case; that is, as to the ultimate thing to be determined, whether or not Mr. Marshall is or is not guilty of the charges of impeachment which have been preferred against him; and, therefore, as it is personal largely to me as one of the members of the subcommittee, I would refrain from expressing any opinion upon this matter which has been brought before you now, to wit, the charge of contempt, and I would be very glad to assist in informing the committee of any of the facts of which you care to have notice, other than those which appear from a casual reading of the record, because I, with other members of the committee, have probably a more comprehensive knowledge of the facts and can explain them to you in a quicker manner than by reading them over.

Mr. STERLING. May I ask you, Mr. Gard, did all of the members of the committee go to the district attorney's office with reference to these grand jury minutes?

Mr. GARD. We did not go to the district attorney's office. The facts in that case were these: That after we met in New York we heard one or two witnesses, and we determined that the big thing for us to find out was whether or not the charge by Buchanan was true; the charge that he made, and which was discussed on the floor of the House, and which seems to me to be really the controlling charge in the passage of the resolution creating this committee and authorizing the investigation of the impeachment charges, was this:

That Buchanan, a Member of Congress, had been indicted by this district attorney because of matters which he (Buchanan) had spoken upon the floor of the House, and that he had been indicted because of that fact and without evidence. That was a charge which Buchanan made, and he reiterated it before the Judiciary Committee as to himself and other persons. But in so far as I am concerned, and I think in so far as the House was concerned, the very vital question was to determine whether or not the privileges of speech on the floor of the House had been invaded by this district attorney and this indictment had been returned through the agency of the district attorney because of what Mr. Buchanan had said on the floor of the House.

I refer to what Mr. Buchanan originally said when, on December 14, 1915, he presented some 10 charges of impeachment. After these 10 charges of impeachment were presented on December 14, and about two weeks thereafter, he was indicted by this grand jury in the southern district of New York, of which district Mr. Marshall was the district attorney, upon this charge of conspiracy of an attempt—I have forgotten the language.

Mr. WEBB. To restrain interstate and foreign trade.

Mr. LENROOT. Let me ask you this: Was there any evidence before your committee on the subject as to whether or not there had been newspaper reports of the probable indictment of Mr. Buchanan before the impeachment?

Mr. GARD. No, we did not go into the discussion of newspaper reports. I am frank to say to you that we discovered evidence—this is one of the facts—we did discover evidence that there had been a consideration of the charge upon which Mr. Buchanan was later indicted.

If the committee will pardon me a moment I will tell them, as a matter of fact, the way this thing came up. There was a man by the name of Von Rintelin, who was a German agent. He came to this country, so the evidence showed, with some money from his Government, first for the purpose of buying supplies; and it was said in the evidence which we obtained from those who testified (notably from a man by the name Bielaski, who is Chief of the Secret Service Bureau here in Washington, attached to the Department of Justice) that, failing to buy supplies, he was attempting to influence persons to obstruct interstate commerce and trade by inciting strikes and damaging buildings and things of that kind.

The matter first arose by reason of the application of Von Rintelin for a passport as an American citizen. He had been in this country and desired to return to Germany or England, I have forgotten which. At any rate, he made an application to the State Department for a passport, giving a fictitious name. While he was in New York it seems that Von Rintelin, who had not been suspected, went out to dinner one night with a lady, and during the course of the dinner confided to this woman——

Mr. CRISP. Another Samson?

Mr. GARD. Another Samson. Confided to her what he had done, and somewhat boastfully spoke of his progress and achievements along the lines they said he had been commissioned to act. Thereupon this woman reported the facts by letter to the Secretary of State, and the Secretary of State caused investigation to be made through the officers of that department, and that was the beginning of the investigation against Von Rintelin.

In the meantime Von Rintelin had taken passage on boat; he did not get the passport, but he had taken passage and was on the high seas at the time they discovered the attempted fraud in the matter of the passport. He arrived in England and was taken from the boat and was interned, and is now interned in some British prison.

From the Von Rintelin passport case there developed the activities of Von Rintelin with David Lamar, familiarly known as the "Wolf of Wall Street," and others—a man by the name of Martin and a man by the name of Schulteis, I believe.

Mr. WEBB. Also Taylor and Monnet?

Mr. GARD. Yes. And from the Martin and Schulteis end of it there developed the organization of what was called Labor's National Peace Council, it being the charge that Von Rintelin had subsidized Lamar by money, and that Lamar and Schulteis and Martin, I believe, had organized or attempted to organize this Labor's National Peace Council, and that Mr. Buchanan, our colleague from Illinois, was the first president of Labor's National Peace Conference.

It was from that state of affairs that the investigation in the district attorney's office was made primarily, as I have said, following the trail of the fraudulent passport case of Von Rintelin, afterwards leading down into the activities of Lamar, of Martin, and of Schulteis, and then all together leading into the activities of Buchanan and ex-Representative Fowler and ex-Attorney Monnet, of Ohio, and other persons who were identified with what is known as Labor's National Peace Conference.

But it is fair to say, because it is a fact, at least I would say it was an established fact, that the evidence we had showed that there was an investigation of this case as early as September of 1915, the latter part of September, and it is probably, while of course we did not get the evidence and could not establish it positively—it is probable at least to my mind that there was evidence being considered which bore either directly or indirectly upon the association of Mr. Buchanan with this charge of attempting to impede interstate commerce, so that is the statement with regard to the original investigation.

While that disposed of one branch of it there still remained the branch, as charged by Mr. Buchanan that this indictment, which is an indictment of conspiracy—and by the way, I may stop here long enough to say that it is the practice, it seems to be the invariable practice in the courts in New York, in the United States District Court of New York to obtain first an indictment against a defendant for commission of a specific crime, and to follow the indictment for actual commission of the crime with an indictment for conspiracy, in which they proceed to include not alone the defendant but every person that they can possibly associate in any way with the defendant. They have even included in certain cases witnesses, and every person that they can associate in any branch of the case, directly or indirectly. So that the committee upon its first day thought, and honestly thought, that sitting in a purely executive session, Mr. Buchanan not being present nor his attorneys nor anyone, no stenographer, just the three members of the committee—we thought of looking at the minutes of the grand jury to determine whether or not there had been evidence offered before the grand jury, particularly against Mr. Buchanan, because that was the matter that we were immediately charged to investigate. And, as I have said, it seemed to me that the attitude of the United States district attorney at that time was eminently proper, because when we called him in, as I have said it was purely a little round-table talk; no one was present; we said to him, "These charges have been made by Representative Buchanan; that his indictment and other indictments have been returned without evidence," and we said we had been commissioned to investigate this, and we asked him whether he would voluntarily submit the minutes of the grand jury in certain cases, such cases as we might desire to look at, or whether he would prefer that we issue the process of our committee. He said that that was a matter he felt he should consult with the Attorney General about, and he asked sufficient time to communicate by letter or telegram with the Attorney General and we readily accorded him that, and he did so communicate with the Attorney General, and he advised us as his opinion and that of the Attorney General that the minutes should not be given to this congressional committee.

Thereupon we did not pursue the subject any further, but we did proceed along the lines of the examination of some four or five of the grand jurors who returned this indictment. In each case, as my recollection is, we told them that we realized what the ordinary oath of a grand juror was, and that we did not wish to insist upon any question which they thought should be privileged or which would in any way violate their oath, because all of the committee felt that we were not judges of the weight or of the sufficiency of the evidence, but only

as to whether or not the charges had been sustained and that indictments were being returned without evidence and solely by direction of the district attorney for the southern district of New York.

As I have stated, we heard the evidence of four or five—five, I believe—members of the grand jury, and then we proceeded along the lines of other evidence.

Mr. CRISP. May I interrupt you there?

Mr. GARD. Certainly, sir.

Mr. CRISP. It was stated by Judge Nelson that it was common practice in New York to have grand jury presentments presented to the courts when they were necessary in evidence. What method do they take in the State court; do they get a subpœna duces tecum?

Mr. GARD. You mean to produce the records of the evidence of the grand jury?

Mr. CRISP. Yes, sir.

Mr. GARD. In the New York court the practice is this, so I was told. When you desire the production of the minutes of the grand jury the defendant files a motion with the court asking that the county district attorney produce for the examination of the defendant the records of the minutes of the grand jury, and while that is a privilege, it is a privilege entirely within the discretion of the court, and the evidence before us was that it is a privilege which is very seldom given—that the courts in New York have almost universally held that these minutes should not be offered to the defendant.

In some places, as members of this committee know, the names of witnesses are returned upon indictments, but in the New York courts that practice is not followed.

Mr. CRISP. I did not make myself clear. I understood that Federal grand jury presentments were presented to the court. That is what I wanted to know, it that is true.

Mr. GARD. No; I think not.

Mr. CRISP. What I wanted to get at was whether there was any discrimination in refusing the minutes to this committee where they did furnish minutes to the court.

Mr. GARD. No; I think not. This is what use they make of grand jury minutes in the Federal court. There is no Federal statute authorizing the defendant to have the privilege of inspecting the minutes, but there is such a statute in the State of New York, and the ordinary rule is that the State statutes govern in the jurisdiction where the United States authority is invoked. But it is my understanding that the courts always hold that it is a matter entirely in the discretion of the court and, as a matter of fact the minutes have very seldom been awarded in the county courts and, as far as I am advised, none at all in the Federal courts.

Mr. CRISP. The Federal courts are the ones in regard to which I inquired.

Mr. GARD. There are none at all given in the Federal courts; there have been some requests made, but the minutes have never been given to the inspection of the defendants. We did not, of course, intend to have these minutes given to the inspection of the defendant Buchanan, or any of the other defendants. It was simply a matter in our mind of looking at these minutes to determine a question as quickly and correctly as possible whether or not there had been evi-

dence, and at what time the evidence began to associate itself with the investigation against Buchanan as bearing upon the charge which Buchanan made, that his indictment was directly caused by what he said on the floor of the House on December 14, 1915. That is when he impeached Marshall. We thought that by seeing the record of the evidence we could find whether or not when Buchanan made this first charge there had been up to that time anything against Buchanan or whether it was after that and their reason of making this charge was that Buchanan had been associated in this charge of conspiracy.

I think it is in the mind of every member of the House that the big question, the solemn question in all this case is as to whether or not the privileges of Members of the House in free speech on the floor have been invaded, otherwise it is my opinion that the great bulk of the charges here contained are charges that never should have been brought to the attention of the impeachment proceedings, but nevertheless they are here, and largely here because of that one predominant fact, and we have been commissioned to make investigation of them.

Mr. STERLING. Did you learn this, as to whether or not Buchanan's case and Fowler's case had been presented to a grand jury before a date in December that Buchanan made the first charges?

Mr. GARD. I said that was the reason we desired to inspect the minutes; but there was evidence that the original case, the Von Rintelin case, had been considered as early as September, of 1915, and that this Buchanan case is an outgrowth of the original case; it all grew out of the first charge against this German agent, Von Rintelin, and we could not find from the evidence of the jurors, whose testimony necessarily would not be as conclusive as the written record, when it was that the charge against Buchanan was first made, or that there was any assertion of investigation against Buchanan, so we thought if we could get these minutes and see them, they would forever settle that one disputed question.

The minutes were refused us by the district attorney, acting on the advice of the Attorney General, it is fair to add, and we felt that the matter was of probably such privileged nature, since the Attorney General directed that the district attorney not disclose the minutes, that we would not pursue that investigation any further.

Mr. STERLING. Did the grand jurors answer your questions?

Mr. GARD. They did.

Mr. STERLING. That is in this record?

Mr. GARD. Yes, sir; they answered very frankly, most of them. Of course some of them did not have very good recollection about the matter, but one or two of the witnesses were surprisingly good in my mind in what they did recollect about the proceedings before the grand jury.

Then the committee followed the further investigation of testimony and as the chairman of the committee has said, and Mr. Nelson said likewise, they were forced to follow, as in every impeachment, the testimony of the man who makes the charge of impeachment.

To my mind the charge of impeachment is of such solemn character that no Member of the House should make the charge unless he has evidence which he honestly believes will substantiate or corroborate

at least the charges he has made, and therefore we took the testimony, the names of the witnesses given us by Mr. Buchanan.

Of course we would have the committee know, which is a fact, the peculiar circumstances of this case in that it related to Mr. Buchanan itself. It is not such a case as one would consider against a district judge, or a judge of any other kind, or any other Federal officer affecting his conduct in general, but here is an allegation that the conduct complained of by this Member of Congress affected him individually; that the conduct of the district attorney for the southern district of New York affected the substantial rights of freedom and liberty and the free speech of this Member of the House of Representatives.

Then Mr. Buchanan said on the floor of the House, and we all know, I suspect more or less of the truth of this, that he was not a man of large means; that he was not a man skilled in the interpretation of law, and the committee being not a court, being not commissioned to sit in final judgment on the matter, but being a committee of investigation and therefore largely inquisitorial, afforded what it thought a reasonable latitude to this Member of Congress, possibly a latitude somewhat greater in extent than it would have afforded under any other circumstances; but being a Member of Congress, and under the conditions I disclosed, we felt that the House would demand of the committee a substantial compliance with the request of the House that we investigate these matters which Mr. Buchanan had said upon his authority as a Member of Congress were charges of impeachment, so that we got these witnesses from day to day and from time to time from Buchanan, and so far as the attorneys were concerned, being present, Mr. Walsh and David Slade were present, that is true, except when we did resolve to go into executive session.

The complaint is made that we should have been all the time in executive session. I do not know as to that, but I have served on the impeachment case of Judge Dayton down in West Virginia last year and all the hearings we had were open hearings. We had none at all of a secret character, and the evidence in that case was prepared and many of the questions were asked by attorneys employed by an association which was opposed to the continuance of Judge Dayton on the bench.

Two different attorneys were present and prepared the case and asked questions; of course, the members of the committee asked questions too; but these attorneys were from time to time privileged by the committee to ask questions. So that was the plan we adopted in New York.

It is probably well to advise this committee also that the newspaper men in New York are a very enterprising lot, and it was a matter of investigation of the United States attorney up there and was a very large thing to them. There were probably 20 or 25 newspaper men there all the time and we thought than rather to have a garbled report go out, that in so far as we could, in so far as the circumstances would authorize, we would prefer to have open hearings, so that there could be no mistake as to what was said and by whom it was said.

In the consideration of these matters, in these open hearings, we did not, as the letter of Mr. Marshall states, call "every rogue or scoun-

drel," or whatever his language is. We had such men who appeared voluntarily as a witness, as Mr. Wise, the former district attorney in New York, the predecessor of Mr. Marshall. We had Mr. Stansfield, who is a leading New York attorney. We had the county district attorney, Swan, who appeared there to testify. We had Mr. Whitney, an associate of Mr. Wise; we had several other New York attorneys of high standing, including Martin Manton and Martin Littleton, a former Member of this House, probably known to many members of the committee, and there was no evidence offered as the chairman has said, and no evidence taken by the committee of anyone whom we thought would come within the scope of "rogues," as charged in this letter. But even if there had been, I think the committee was thoroughly able to distinguish between evidence influenced by bias or prejudice or untruth, or even personal motives, and evidence which would be truthful evidence—and it was not that Mr. Marshall waited until there could be any determination by this committee—but it was an attack upon what the committee was likely to do before there was any indication of what they really did intend to report.

The evidence proceeded along lines embraced solely in the charges of impeachment, until there came this matter of the association between the publication of this letter and what occurred afterwards. This publication was made, so the evidence discloses, by a man of the name of Holme, who was a British subject, and, as the letter discloses, was made afterwards by information furnished him by the district attorney. The language used by the district attorney is contained in the letter which you have been advised of.

After this letter was received the committee made no comment upon it. Since the letter has been received the committee has from time to time heard other evidence, and is endeavoring to determine the truth of the charges made by Mr. Buchanan without respect to the criticism if such it may be called, of the committee in this letter, and I can assure the committee——

Mr. MOON (interposing). How long did your committee remain taking testimony after the receipt of this letter?

Mr. GARD. They remained taking testimony—well, we are still taking testimony, Mr. Moon.

Mr. MOON. I mean up there on this trip.

Mr. GARD. The committee had finished its taking of testimony in New York. The committee worked on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday in New York. On Saturday we adjourned early because some of the members desired to return to Washington, and at about 3 o'clock in the afternoon notice of this was transmitted to Mr. Carlin, so far as my information goes. I did not see the letter until later, when Mr. Carlin, the chairman of the committee to whom it was addressed, showed me the letter.

Mr. STERLING. Then you did not go back to New York any more?

Mr. GARD. No, sir; we did not go back to New York any more. We held a session in New York on Saturday, but this letter was delivered to Mr. Carlin by messenger on Saturday afternoon after we had finished our labors up there, and so had announced.

Mr. LENROOT. At this executive session the hearing shows that you adjourned at 12 o'clock noon after holding your executive session.

At that executive session did you determine you had completed your investigation so far as the New York end was concerned?

Mr. GARD. Yes, we had heard all of the witnesses whose names had been given to us as being witnesses who we could get in the city of New York on these different lines.

Mr. LENROOT. May I ask you what were your relations with these attorneys of Mr. Buchanan's in New York?

Mr. GARD. I will be very frank to tell you that. Mr. Buchanan, as you know, is not an attorney. He has no knowledge of how any charges should be framed or how they should be presented.

He was represented in Washington first by former Congressman Hill, of Illinois, who, I think, still appears sometimes as his representative. Then he secured the services of a man by the name of English to act as his attorney in the city of New York, Mr. English being the same man who was a short time ago shot and killed by his wife in a little mountain home down below Frederick, Md.

When we got to New York, Mr. Buchanan told us that Mr. English was no longer appearing as his counsel; that he had a man by the name of Walsh as his counsel. I have forgotten what Walsh's first name is, but I think it is Walter J. Walsh; and Mr. Walsh appeared, I believe, with a written authority from Mr. Buchanan that he was his attorney; at least he was the attorney for Mr. Buchanan.

Our relations with these attorneys were the same. When we heard the case in Washington, we permitted Mr. Hill to be present. It was our policy to examine the witnesses ourselves, and we then conferred at the conclusion of the examination with the attorneys and asked them if there were any questions which occurred to them that we had not asked, and sometimes they did ask an occasional question.

We pursued the same course with respect to Mr. Walsh, except in one or two instances, where Mr. Walsh said that there were some matters of which he had knowledge of that he thought he could obtain the evidence better than by having the committee examine, so the chairman of the committee permitted him to examine the witnesses.

Mr. MOON. You let Mr. Buchanan be represented by counsel when necessary?

Mr. GARD. Yes, sir.

Mr. LENROOT. What I have in mind, particularly, was this: Your relations with these attorneys were entirely within your official capacity?

Mr. GARD. Entirely. There was some feeling on the part of Mr. Buchanan that we had not given sufficient latitude to his counsel, I am frank to say. But I thought we had. I felt that the committee was really the body which should ask the questions and that we should permit the attorneys for Mr. Buchanan to be present only in an advisory capacity. We had no relations with them except of an official character. Personally I did not see any of Mr. Buchanan's attorneys at any time except when they were in the court room, and I had no acquaintance either with Mr. English, Mr. Walsh, or any of the other attorneys of Mr. Buchanan, except Mr. Hill. I knew him, of course, as a Member of Congress last year, but our relations with them were purely official.

Mr. LENROOT. One other question. Throughout this entire proceeding your committee had in mind Mr. Buchanan's personal interest in this case?

Mr. GARD. Entirely so.

Mr. LENROOT. And you suspected him of the desire to secure evidence that would aid him in the defense of the indictment against him?

Mr. GARD. Of course we indirectly had that in mind. I am sure I did. I felt there might be charges against the committee and the fact might be charged against Congress that if we went along a certain line of attempting to inquire into evidence that we might be accused of doing it for the purpose of helping Mr. Buchanan, who was charged with a criminal offense, and I have felt and feel now, I am very frank to say, that I do not consider the privileges of the House, or our natural sympathy with a colleague as a member of the House, would call for any such consideration by either the subcommittee or the Members of the House. I believe if Mr. Buchanan is guilty of this charge that he should be prosecuted as any other person should be prosecuted and that there should be no special favors shown him by reason of any congressional investigation which would advise him in advance of the evidence which the Government had against him. If that could be true, of course it would be an unjust state of affairs, and the committee never had that in mind at all.

Unfortunately that seems to have been the attitude assumed by Mr. Marshall. I say it is unfortunate, because I think it is unfortunate. Personally I never saw Mr. Marshall but one time, but the evidence which I have heard about him leads me to understand that he was a man of ability and of high character and standing in his profession and as a citizen of the city and State of New York. And I was greatly surprised to learn of his attitude of hostility.

I can assure this special committee that there was no desire on the part of any of the members of the subcommittee or of the Judiciary Committee of the House of Representatives to secure for Mr. Buchanan any evidence which would advise him of that which the Government had possession of; merely to inquire—these, if I may reiterate, these were the two big things in my mind.

When I think of all these things put in here about the Rae Tanzer case, which was a criminal case in New York City, and a lot of investigations about Hebrew attorneys who had been charged by Mr. Marshall with a conspiracy to conceal assets in bankruptcy cases, while there may have been some irregularities in those proceedings, I think they were not of the high character which should have allowed them to have them brought into the House of Representatives as a basis of a charge of impeachment of a public officer. That, if anything, they should have been considered by the superior of Mr. Marshall, the Attorney General of the United States, or by the President of the United States, as to whether or not they were not charges of impeachment.

But there were charges of impeachment against him in this, that he, as district attorney, was, first, returning indictments in his jurisdiction against men without evidence, and, second, that without evidence and solely because of that which Mr. Buchanan has said on the floor of the House, that he caused an indictment for conspiracy to be returned against Mr. Buchanan. Those two things, in my mind, were the controlling things then, and are now; I think they are the big things which the House wants to know—whether these things

have been proven against Mr. Marshall upon the accusation of Mr. Buchanan.

The other matters I am ready to report upon; they are included in what we had to investigate, and we of course will make reports according to the way we view them; but these other two matters are the big things, and the things which the House is interested in, and the things I think we are responsible for in the consideration of the impeachment charges.

Are there any other questions?

Mr. LENROOT. Has your committee now completed its examination of witnesses, or is it still proceeding?

Mr. GARD. No, sir; we heard the two witnesses on Wednesday, we heard witnesses on another line on Wednesday, a witness from Bloomfield, Pa., and a witness from New York, a man from the district attorney's office, and Mr. Walker appeared, and Mr. Buchanan has said to us that he has gone to Chicago and that he would return in a short time and that he would then advise us if he had further evidence.

It seems to me, without violating any confidence, that the consideration of the evidence by this subcommittee is about concluded, unless Mr. Buchanan unexpectedly comes forward with more witnesses; the committee at this time has no other witness to examine, and is, I think, ready to make its report, practically.

But the thing which appeared to me to be necessary was the entire disassociation of the actual proof of the charges from this alleged contempt, because I feel that it is not alone due to the House of Representatives, but it is due to Mr. Marshall, and I feel that I am broad enough to make such a report that despite this letter, if in my mind the truth of these charges of impeachment is not proven by the evidence produced by the impeaching man, Mr. Buchanan, for one, I shall have hesitancy in saying so, and I feel, therefore, that it is not alone a matter which affects the rights of the House, but affects these rights of Mr. Marshall, that these matters be considered independently with regard to what we all ultimately accomplish, and that is the administration of justice on the floor of the House and in the office of the district attorney of the southern district of New York.

Mr. STERLING. Does Mr. Marshall understand from the committee that he could be heard at any time in his own behalf, that he could have witnesses there?

Mr. GARD. I do not know that that matter was given to him in the shape of any writing. The only communication, as I said, that we had personally with Mr. Marshall was this, that when he came, and in response to our inquiry that he do come, we told him of these charges, and my recollection is that we told him that he was entirely welcome to be present at any time, either himself or by his attorney. This was entirely an executive session, as I have said to you. What he said, as Mr. Nelson has explained, when he showed him the records—we had them contained in the record—said he had never read them; said he did not care anything about them. We asked him whether he wanted to read them. He said, "If you want me to read them, send them down to my office." We later prevailed on him to take them with him, and he did take them, and retained them a short time, and he returned them with a statement that what the committee had said that Mr. Buchanan had made the charge that these indictments were returned without evidence, was a creation in the minds of the

committee; that his interpretation and construction of the charges warranted no such construction, and if, he said, the committee had assumed that construction based entirely upon the statement of Mr. Buchanan, that he was not guilty of the charge for which he had been indicted.

We said to him that he could be present in person or by counsel, and he rather vehemently protested that he did not know what the charges were; that he did not want to read them; that he did not want to have anything to do with any of the proceedings.

That is what I referred to when I spoke of what seemed to me was the unfortunate attitude which Mr. Marshall had against this committee when the committee was, if anything friendly to him.

Mr. MOON. Is there anything further you wish to ask Mr. Gard?

Mr. GARD. Mr. Nelson is here.

STATEMENT OF HON. JOHN M. NELSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN.

Mr. NELSON. Mr. Chairman and gentlemen of the committee, I suppose that Mr. Webb, our chairman, and Mr. Gard have gone over this matter, both facts and the law in the case, and I am sure I do not want to weary you.

I simply desire to say that anything that Mr. Marshall has done has not influenced my attitude toward him at all. The only reason why the committee, so far as I know, reported to the Subjudiciary Committee was that it was so public, it was so far-reaching in its effect, it seemed to me that we could not ignore it; it was our duty to report it to the Judiciary Committee, and this committee thought it was its duty to report it to the House.

You see, the fundamental thing here is after all not anything personal, but it goes right to the highest prerogatives of the people. This impeachment, as I understand it, is the highest power of the people to preserve free government. It is the only way the people have of restraining encroachment of power, either in the executive or or in the judicial departments.

I want to say to you gentlemen of this committee, if you have any thought that this gentleman [Mr. Marshall] has not any power, you go over there and you will be astonished, I believe—I know I was—at the power of that office. He has 27 assistants in the most populous city of the land, using subpœnas and indictments, and conspiracy charges and other agencies of government in the way of secret service, in a manner that was simply overwhelming, reaching out to get common people, citizens and lawyers and ex-Members of Congress and Members of Congress—I do not want to go into the facts of the case because we have not determined that—but surely, outside of everything else, it has been a very interesting study to see the power of this office.

Now, that being a matter of high prerogative of the people, and the House having taken jurisdiction of it, we exercising judicial functions, there is no mistake about that, we were not there in a representative capacity, not there in an administrative capacity, and the courts have uniformly, you will notice when you read the precedents, held that we were exercising judicial functions; we were in a judicial capacity; we were the grand inquisitors of the Nation, partly judicial,

partly acting as grand jurors, and it was direct contempt of the committee. I perhaps will withdraw that; I mean withdraw it so far as the statement that it was contempt. I do not wish at all to suggest whether it was contempt or not. That is for this committee to say. I am here to answer the facts, and if you wish to have the benefit of the discussions or the information that we developed in the Judiciary Committee along what lines to look in the way of the judicial precedents and parliamentary practices. I have had occasion to study this thing from various angles, but so far as concluding as to the facts, whether they constitute contempt or not, I would not suggest anything.

If there is any question you gentlemen wish to ask I should be very glad to have you ask it.

Mr. STERLING. Mr. Chairman, I should like to ask Judge Nelson a question.

Mr. MOON. You may ask it.

Mr. STERLING. Just to bring out this thought before our committee without intimating what conclusion the committee might reach as to whether there has been violation of the privilege of the House or not, for I have not reached any conclusion.

But, say this committee should reach that conclusion, and reach the opinion that they should recommend to the House that Mr. Marshall be summoned before the House for breach of this privilege, as a question of policy or propriety, do you think that should be done prior to your committee reaching a conclusion as to whether they should prefer impeachment charges or not? In other words, if the House should bring him up and attempt to deal with him for contempt before you make a report, will the country take that as tending to prejudice the Judiciary Committee against him before they make a report on the charges out of which this alleged contempt proceeding grew? I want to get your idea and bring that out before the committee.

Mr. NELSON. We have carefully considered that point, both in the subcommittee and in the full committee, and we have come to the conclusion that it being a distinct, separate matter, a separate matter entirely, his attack upon the House, that we should not like to impeach a man for that. It may possibly go in the case, I do not say.

Mr. CRISP. It would certainly not be within your jurisdiction to take cognizance of that?

Mr. NELSON. I should not think so. On that question we have not passed. But this is an offense, if it is an offense at all, against the House itself, the committee of the House, the individual Members—if you will investigate you will find that section 6 of Article I covers this, as well as physical assault in the Sims-Glover case, and it is also the question of the rights of witnesses.

They were told they were rogues and rascals. It is a question also of the right of an impeaching Member of the House, who is in attendance upon a committee, who is said to be a criminal and a traitor, and all that—these things are all involved.

Now, we believe that this is a distinct matter; that it should not be confused with the other. We may find that he is not guilty of the impeachment charges, but we may also find that he is. We have not concluded. We are still investigating carefully. It seems to us that there should be no confusion; that this should be brought to

the attention of the House, and that it should settle this matter by itself, and then we go right on as if nothing further had occurred in a fair and impartial way to ascertain the other things to report; that it is not well to confuse the two.

Mr. CRISP. I agree with you that it is an entirely separate and distinct proposition, but my question was whether you thought you should make a report on this distinct proposition before you had made a report on your other distinct proposition.

Mr. NELSON. We are unanimous, practically, now. We were unanimous in the subcommittee and also in the full committee that it ought to stand out distinctly.

Mr. GARD. I think some of the things that Mr. Marshall has said, notably this part here where he says that he regarded a Member of Congress who would take money for an unlawful purpose from any foreign agent as a traitor, I think that is true. I would not put myself in a position, as a member of this subcommittee, to attempt to impede justice in any way, and that if this subcommittee or that if this special committee thinks there should be any deferring of your report until we can make our report, that is a matter entirely indifferent to me. The only thing in my mind is this, as Mr. Nelson has said, in an attack upon the House of Representatives, directly addressed to a subcommittee, it is true, but relating to the conduct of the whole House, from the inception of these charges made against Mr. Marshall by Mr. Buchanan. That is, as I think, we all agree.

Now there was some disagreement of opinion, I am frank to say, but I think there is practically unanimous expression in the entire Judiciary Committee now, that these are separate and independent charges; that the charge of contempt should not be associated with the charge of proven guilt on the impeachment charges, and I go so far as to say that this letter, while it is surely an impertinence and may be a contempt—I am not passing on the question of contempt—was not such that we could base a charge of impeachment on. I would no attempt to bring that before the committee.

I simply want the committee to understand my own personal attitude in this matter, that my attitude is not as appearing here today to inform you (as I have thought to inform you honestly and impartially), it is not any attempt to impede or even delay justice, because I believe, and I think every one who considers the matter honestly, likewise believes that if this charge, this indictment against Mr. Buchanan and Mr, Lamar and Von Rintelin and others is returned, was returned after evidence sufficient to indict, and it is a case which should be tried. I firmly believe the district attorney should try the case without being impeded or sought to be impeded by any action of Congress. That the administration of justice would necessarily demand (this is a serious case against Mr. Buchanan), and I would not knowingly do anything to impede the proper presentation of that case to the jury.

Mr. LENROOT. This resolution, Mr. Gard, compels this committee to report not later than the 14th of April.

Mr. GARD. Yes; I understand that.

Mr. LENROOT. Was it the purpose of the committee in putting that in to secure action by Congress in this matter in advance of the other?

Mr. GARD. There was no such purpose.

Mr. NELSON. They can make the report and let it lie, but we simply followed a precedent. We were limited to five days in the Glover-Sims case, and it seems to be desirable that these things should not drag.

Mr. CRISP. I think if the committee desired longer than that, I am sure the House, on the request of our chairman, would wait longer.

Mr. MOON. It seems to me that this committee, and the other committee, are composed of sensible people. I do not see any reason why we should delay this matter any more than a court should delay a case on account of a motion pending in that case.

Mr. STERLING. Is it your idea that we should give Mr. Marshall an opportunity to be heard before this committee?

Mr. MOON. I have not thought of that matter; I would think we are sitting somewhat as a grand jury in this matter. Let Mr. Marshall be heard before the House.

Mr. LENROOT. That goes again to the form of this resolution. This form of resolution seems to delegate the matter entirely to this committee.

Mr. CARLIN. When you are through with the questions I should like to make a personal statement, not to go into the record.

Mr. STERLING. What do you gentlemen think about that, if Mr. Marshall cares to be heard here?

Mr. NELSON. So far as I am concerned, I shall have no objection at all.

Mr. CARLIN. Nor as far as I am concerned.

Mr. NELSON. Here is the situation. I am absolutely conscious of honestly trying to discharge my duty, and in the exercise of that duty—in the way we are challenged, the motives of the House, upon faith I can show you the newspaper headings, all of them charging upon faith that the Congress and the House are trying to shield criminals, and all these things.

Mr. STERLING. I do not think, Mr. Chairman, that the House expects us to report an ex parte matter here at all. The House will not want to hear evidence in a contempt case. The House will want us to hear all the evidence to be heard, I think, and make our report.

Mr. WEBB. We have no objection at all.

Mr. MOON. Under the terms of the resolution we are to find if any of the privileges of the House have been violated; then to find whether that was contempt or not, and then determine the procedure. I think those are the three things we are obliged to do. I surely have no objection to hearing Mr. Marshall so far as I am concerned.

Mr. STERLING. Suppose this were before a court; suppose it were for contempt that occurred outside of the court. The court would have the right to refer the matter to a commissioner to take the testimony on the contempt, and of course the court would want to know all the facts of the case, both sides of it, before he would pass on the question of contempt.

Mr. GARD. It was our thought that the facts were established by this letter. We associated also the additional letter which came to Mr. Webb, the chairman of the Judiciary Committee, but we thought the facts, in so far as the actual charge of contempt at least were presented—I will not say established—but presented as contained in the letter.

Mr. STERLING. I think that is true; but suppose Mr. Marshall came down here and undertook to justify some of the statements? Do you mean to say it would be contempt if he could justify them? Suppose he wanted that opportunity?

Mr. WEBB. I see no objection in the world to it.

Mr. NELSON. Of course, it is customary to let him be heard before the bar of the House. I do not know of any precedent where they have had a prior hearing.

Mr. LENROOT. This resolution seems to delegate that full power of investigation to this committee.

Mr. WEBB. I think, speaking for both the full committee——

Mr. MOON (interposing). This evidently contemplates a hearing before the House, of course, because we are to determine the power of the House to punish for contempt, and the procedure.

Mr. GARNER. In reading his letter the question of contempt, it seems to me, is embraced in this letter—whether or not the statements in this letter reflect on the House of Representatives through its delegated committee; and, if it does, that fact alone would be conclusive. Mr. Marshall could not take anything back he said in his letter—in fact, he has confirmed it in the letter to the committee itself. Now, the question of the statements made in this letter—do they come within the purview of contempt of the House of Representatives?

Mr. WEBB. Mr. Carlin is present now.

Mr. MOON. We shall be glad to hear Mr. Carlin.

STATEMENT OF HON. CHARLES C. CARLIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA.

Mr. CARLIN. Mr. Chairman and gentlemen, I shall be very glad to tell the committee what it wants to know, but I have no statement to make.

I think this committee ought to be left free and unhampered by the other committee in relation to this matter. I only came because I understand that perhaps you might want to ask me questions.

Mr. MOON. You received the letter referred to in this resolution, did you, as the chairman of the Subcommittee on the Judiciary?

Mr. CARLIN. Yes, sir; I did.

Mr. STERLING. Did you see it in the newspaper before you got the original letter?

Mr. CARLIN. It must have been published before I got it. These are the circumstances under which I got it: I was to leave New York on the 3.50 train. I was packing my valise at the hotel, probably within a few minutes of 3 o'clock. It may have been the 3.30 train; I may be mistaken as to the hour.

At a few minutes of three I was called to the telephone and asked if I was Congressman Carlin. I said I was. The voice stated that Mr. Marshall would like to know when I was going to leave the city. I asked who I was talking to. He said he declined to tell me. I said, "It can not be that Mr. Marshall has asked somebody to talk to me unwilling to give his name." "Well," he said, "I will not give my name." I said, "I will be hanged if you will find out when I am going to leave the city," and I hung up the telephone. In a

few moments I decided to verify the statement as to whether this gentleman was talking for Mr. Marshall, and I called up Mr. Marshall's office myself. I got his secretary. He said his name was Richards, I believe. I told him what happened over the telephone, and asked him if Mr. Marshall had tried to reach me in that way. He said he could not say; did not know anything about it; but he did know Mr. Marshall had a letter for me and wanted to communicate with me. I said, "If he does, I will wait here until I receive it."

I hung up the phone, and in a few minutes the phone rang and a representative of the New York World was on the other end of the wire and wanted to know what I had to say about Mr. Marshall's reply to me. I told him I had not received it. "Well," he said, "you will receive it." He went on to tell me what it contained. I said, "I have not received any letter and do not care to give you any statement." I told him that when I did receive the letter I should be very glad to make a statement, although I could not make it for the committee as they had separated. I hung up the phone. I had three or four other newspaper reporters, as soon as they could reach me, call up for interviews. I could not give them interviews because I had not received the letter. When the letter did arrive there were newspaper reporters waiting in the hall and in the lobby, and I think one had gotten into my room.

Mr. GARD. How did you get the letter?

Mr. CARLIN. A messenger boy brought the letter, and as I went away leaving for the train—I am not sure whether I read the article in the paper, his letter to me in the paper, but I think I read on the train not only his letter but things I had said about it and things I had not said about it.

In the last line of his letter he informed me it would be given to the press. But it was an insolent way of communicating with me through a messenger or friend who was unwilling to give me his name, and I was unwilling to believe that Mr. Marshall would adopt that way of communicating with me. I am not sure now that he did, but I tell you what happened to me.

Mr. MOON. Is there anything further, gentlemen?

Mr. CARLIN. I have not anything further.

(Thereupon, at 1.30 o'clock p. m., the committee adjourned until Monday, April 10, 1916, at 10 o'clock a. m.)

MONDAY, APRIL 10, 1916.

The special committee this day met, Hon. John A. Moon (chairman) presiding.

The CHAIRMAN. Mr. Marshall, the special committee having under consideration the charges against you met last Friday and we took the testimony or heard the statements of Mr. Chairman Webb, of the Judiciary Committee, and Messrs. Carlin, Nelson, and Gard. Then the committee sent an invitation to you to be here to-day, which you telegraphed you would accept. In the meantime, we have had prepared the statements made by those gentlemen with reference to the letter which you wrote to the subcommittee of the Judiciary Committee in New York. There is a copy of their state-

ments. I take it that it is the sense of the committee that they are entirely willing for you to ask those witnesses any questions you desire.

Mr. LENROOT. I think if Mr. Marshall desires that opportunity, it should be afforded him.

Mr. MARSHALL. I should like to have an opportunity to read over these statements.

The CHAIRMAN. You can read over those statements and then the gentlemen will come back and you can ask them any questions that you desire. The committee is more than anxious to have the full facts on both sides. Mr. Marshall can make a statement now, if he desires, and if, after reading over the testimony, he desires to ask the Congressmen any questions, we will bring them before the committee for the purpose.

Mr. MARSHALL. Perhaps, Mr. Chairman, that would be the best course. I have come here pursuant to your letter of April 7, 1916, which, I suppose, is a part of your record. I telegraphed at once that it would give me pleasure to come and appear before you. I prepared a statement which I have brought with me and which I should like to submit in writing. I must apologize for its form. I did not receive your letter until about 11 o'clock Saturday morning and I had rather a short time to get it in shape, but I suppose that it will be printed anyhow, and if I may do so, I will submit it.

Mr. STERLING. As the chairman has stated, the members of the subcommittee and also Mr. Webb, the chairman of the Judiciary Committee, made statements to this committee on Friday when you were not present, and you do not know what was said. Would you prefer to read their statements before you submit your statement to the committee or make any further statement to the committee?

Mr. MARSHALL. I will do whatever the committee desires to have done in that regard. That might be a good suggestion.

Mr. STERLING. It might be that after you have read the statements which those gentlemen made that they may affect your views with reference to the matter that is pending here.

Mr. MARSHALL. That is possible. I will take any step you desire.

Mr. STERLING. I presume the committee in that regard will do whatever you desire.

The CHAIRMAN. Whatever is Mr. Marshall's preference.

Mr. LENROOT. The committee will do whatever Mr. Marshall desires.

Mr. MARSHALL. I have no choice, because I do not know what is in the statements. I will have to leave that to the committee.

The CHAIRMAN. I should think that you would probably want to read the statements of the witnesses before you proceed very far.

Mr. MARSHALL. May I read the statements now?

The CHAIRMAN. Yes, sir.

Mr. CRISP. As I understand the suggestion of Mr. Sterling, it is that Mr. Marshall be given an opportunity to read that evidence before he submits his statement.

The CHAIRMAN. Mr. Marshall's statement will be withdrawn, as there is no reason for us to read it now.

(Thereupon the committee took a recess until 1.30 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the committee resumed its session.

STATEMENT OF MR. H. SNOWDEN MARSHALL, UNITED STATES ATTORNEY, NEW YORK, N. Y.

The CHAIRMAN. Mr. Marshall, you may proceed with your statement.

Mr. MARSHALL. I have had an opportunity to go over the minutes which you gave me this morning of the former proceeding before the committee, and I desire to submit the statement that I offered this morning and withheld pending the reading of these minutes.

The CHAIRMAN. Do you want to submit your statement or read it?

Mr. MARSHALL. No, sir; I will just submit it. It will be easier for you to read it than for me to read it to you.

The CHAIRMAN. Suppose you read your statement and then make such other statement as you desire, and we will proceed in that way.

Mr. MARSHALL. Just as you say, Mr. Chairman. [Reading:]

To the Hon. John A. Moon, Chairman, and Select Committee appointed under House resolution 193:

GENTLEMEN: I wish to respectfully submit for your consideration the following statement:

I respectfully but most earnestly protest that I am not in contempt of this House, or of its committee. Undoubtedly the House has the power to consider the question whether a charge against some public officer shall develop into an impeachment of him by the House. In discharge of that function the House, or such committee as it may instruct has the fullest power to summon witnesses, call for the production of papers and require answers to the questions it may be necessary to put to the witnesses. With the exercise of these functions no one should interfere.

Now I have not refused to appear before the committee or the subcommittee, nor have I advised any one so to do, or suggested to any one that he should avoid or evade service of subpœna. I have refused to answer no question, I have failed to produce no document and have not advised or suggested to any one else that he should so refuse or fail to produce—except that in compliance with express instructions of the Attorney General and in conformity with the well settled practice of the Federal courts in the second circuit, I have instructed my assistants not to produce before the committee the original or any copy of the stenographic minutes of testimony taken by the grand jury, and not to testify as to any evidence which was heard by that body at any of its sessions.

Nothing that I have done or said has in the slightest degree delayed, or embarrassed, or interfered with the conduct of the investigation above referred to by this honorable House or by its Judiciary Committee or by its subcommittee.

For these reasons, therefore, I protest that I have been guilty of no contempt of the House of Representatives.

To understand the situation in this matter a preliminary statement of the facts should be made:

The grand jury in the southern district of New York, impaneled in September, 1915, was continued from term to term until December,

and toward the end of December handed down an indictment against Rintelin, Buchanan, Lamar, and others, charging them with a violation of the Sherman law.

This grand jury summoned a large number of witnesses for the early part of December, and the fact that witnesses were being examined, and that an investigation was being made into the activities of the Labors National Peace Council, of which Mr. Buchanan had been president, became public property.

Shortly after this fact become known, and on December 14, 1915, Mr. Buchanan made a motion for my impeachment on six separate grounds, none of which contained any specifications, and all of which were stated in the most general terms. The most specific statement which he made was that I had violated the "eight-hour laws of the United States and of the State of New York." This proposed resolution, on Mr. Buchanan's motion, was referred to the Judiciary Committee, and I understand that Mr. Buchanan was called on by this committee a number of times for specifications, which he did not give.

I regarded this motion made by Mr. Buchanan as a threat to me and intended to deter me from proceeding with the investigation which he then knew was in progress. I totally disregarded the threat and proceeded with the investigation. It was entirely clear to me that there was no reason on earth that would interest Mr. Buchanan, of Illinois, in the administration of the office of the district attorney in the southern district of New York excepting his personal interest in preventing a thorough investigation into his own conduct by the grand jury in this district.

Thereafter, as above stated, the whole case was submitted to the grand jury for its vote, which resulted in the indictment of Mr. Buchanan on the 28th day of December, 1915. He appeared and pleaded not guilty to the indictment on January 5, 1916.

On January 11, 1916, Mr. Buchanan offered a resolution amending his impeachment charges and introducing a resolution directing the Committee on the Judiciary to inquire into whether the action of the House was requisite concerning my alleged misconduct. These impeachment charges were very voluminous but wholly indefinite and lacking in any specification that would enable anybody to find out what I was charged with doing. After some debate, this resolution was withdrawn.

On January 12, 1916, it seems that Mr. Buchanan moved again for my impeachment, setting forth a long list of charges, none of which, so far as I can make out, contain any specifications, and introduced a resolution that the Committee on the Judiciary be directed to inquire into the charges.

I have said that Mr. Buchanan's resolution contained charges against me. I think it would be more proper to say that he filed a few pages of abuse which could not by the greatest stretch of the imagination be called charges. After he had been indicted and called on to plead, he increased the volume of his abuse considerably, but I do not think that anyone who reads the charges will be able to understand any particular act of wrongdoing with which I was charged.

When Mr. Buchanan presented his final so-called resolutions of impeachment in the House on January 12, 1916, there was an extended debate in which a number of the Members took part.

Several Members asked for some specification of the charges, and a number of them suggested that some facts ought to be made known on which a charge should be based. I have examined the Congressional Record of January 12, 1916, and do not find that Mr. Buchanan answered any of those questions. On the contrary, his statement was that he had not the resources to secure information which he honestly and sincerely believed could be obtained if authority was given. The outcome of the debate accordingly was that the indicted Congressman secured a reference of a case in regard to which he offered no evidence except what he described as his "honest and sincere belief," and this "honest and sincere belief," which was not subjected to any very severe cross-examination, set in motion the proceedings which have since followed.

Thereafter, and on January 27, an additional resolution was submitted by the chairman of the Judiciary Committee empowering the Committee on the Judiciary or any subcommittee which they might appoint to subpœna witnesses, employ stenographers, and incur any expense necessary to investigate the question involved in the resolution of Mr. Buchanan. The questions involved were whether or not there was any legal evidence that could be adduced to support his "honest and sincere belief" that the district attorney who had happened to be in office in the district where he had been indicted was guilty of some 42 charges of misconduct. Up to this date, as far as I am advised, no Member of Congress had had placed before him any fact except the "honest and sincere belief" of their indicted fellow Member.

As these events progressed I paid little attention to them. I have been able to state the facts accurately, because I have obtained for the purposes of this statement the copies of the Congressional Record in which the events are narrated. The whole thing, when it first occurred, seemed to me to be a desperate effort to postpone the trial of Mr. Buchanan by putting pressure on the district attorney.

I proceeded with the preparation of the trial of the case of Mr. Buchanan and from time to time I heard that witnesses were being subpoenaed before the Judiciary Committee, or, perhaps, the subcommittee in charge of this matter, I don't remember which. The subcommittee or the committee was, according to my information, during this period, holding so-called secret sessions. I was informed and believed that everybody who appeared before the said committee came back and stated with some surprise that in the secret sessions Mr. Buchanan was always present and that there was usually present at the secret sessions of the committee a lawyer of this city of the name of David Slade, who is at present under indictment in this district and also under charges of having altered a filed bill of exceptions after the trial judge had certified to and signed it, preferred against him to the bar association by the United States district judges in this district. This news surprised me considerably, but I paid very little attention to the whole occurrence, as I never took it very seriously except as a confirmation of the testimony which had convinced me that the indictment of Mr. Buchanan was justified.

Shortly before the week beginning February 27, I learned to my surprise that the committee was coming to New York, and one of my assistants stated to me that he had received a telephone message from one of the members of the grand jury which had indicted Mr.

Buchanan, and that this member of the grand jury had stated that he had been subpœnaed to appear before the subcommittee of the Judiciary Committee in New York on Monday, February 28. My assistant further stated to me that this member of the grand jury had stated that as he understood his duty, he was not at liberty to tell the subcommittee anything which had transpired in the grand jury room, and asked for information. My assistant told me that he requested the juror to await further advices and reported the event to me.

On Saturday, February 26, I was in Washington and told the Attorney General of this occurrence, and asked what he thought should be done about the matter. I explained to him that if this subcommittee, in its supposed investigation into my conduct, was really going to attempt to examine the grand jurors, some step should be taken to prevent such a performance on their part. He told me that he would look into the matter, and on Sunday morning, before I left Washington, he telephoned me and explained to me that Mr. Carlin, the chairman of the subcommittee, had promised him that no effort would be made by the subcommittee while in New York to intrude into the secrets of the grand jury room.

Relying on the promise which, as I was thus informed, Mr. Carlin had made to the Attorney General, I did not take the steps which I should otherwise have taken to prevent the subcommittee from taking the course of conduct which they afterwards saw fit to take.

On Monday, February 28, I was informed that the subcommittee had arrived in New York and had started public hearings, and that they were examining members of the grand jury which had indicted Mr. Buchanan. I am not to be charged with neglect in failing to prevent this misconduct on the part of the subcommittee, because I relied on the explicit promise which, as I had been informed, Mr. Carlin had made to the Attorney General that such an examination of the grand jurors would not be made.

I was greatly amazed at this first action of the subcommittee. I ascertained that they had thrown their hearings open to the public, and I was called on by a number of newspaper reporters to find out whether any charges had been served on me or whether I was under any charges. I told the newspaper reporters that so far as I knew I was not under any charges, that no charges had been served on me, and that I knew of no charges except that I had read of a resolution which Mr. Buchanan had introduced in the House, in which he made a number of unpleasant statements about me.

From Monday, February 28, to the end of that week the subcommittee continued its hearings. The proceedings of the subcommittee, with the exception of so-called executive sessions, have been printed, and what occurred before the committee appears in the printed record.

From the beginning of these proceedings to the end the subcommittee omitted no opportunity to act in what seemed to me and others an insulting manner to me and to my assistants.

On the afternoon of Monday, February 28, while I was busy in my office, the subcommittee sent the Sergeant at Arms of the House to bring me before the subcommittee. I asked to be excused, and asked for some notice if the subcommittee wished to see me, but the Sergeant at Arms was insistent, and in order to avoid a scene I went with him before the subcommittee. I was not given the ordinary subpœna

which was given to other witnesses, but the Sergeant at Arms insisted on my immediate appearance before the said subcommittee, and I accordingly appeared.

When I appeared before the subcommittee I was told that the subcommittee desired to see the minutes of the grand jury in the Buchanan case, and also the minutes in the case of one Rae Tanzer and the Slades. I was told that Mr. Buchanan had stated that he was not guilty of the charge of which the grand jury had indicted him, and therefore he had charged me with having indicted him without evidence. I was told that it was also stated that in the Rae Tanzer case and in the Slade case there was no evidence to justify an indictment, and that the subcommittee desired to examine the grand jury minutes in those cases to ascertain whether the charge was true that the Slades and Rae Tanzer had been indicted without evidence. I was asked if I knew about the charges against me, and replied that I did not. I did not understand that the subcommittee in speaking of "charges" referred to the speech which Mr. Buchanan had made in the House of Representatives on Wednesday, January 12, 1916, but supposed that they must have reference to some definite or specific charges which I thought he might have subsequently made. I was then handed a copy of the Congressional Record of the date last named, which I carried away with me.

I stated to the subcommittee that they could satisfy themselves completely as to whether there was evidence upon which Mr. Buchanan should be indicted by asking him one question, namely, where the money came from which financed the activity of Labors National Peace Council, of which he had been president; and how that money had been spent. I said that if they would require an answer to that question, they need not ask me any questions as to what the evidence was against Mr. Buchanan. The chairman of the subcommittee stated to me that Mr. Buchanan had denied that there was any money used by the Labors National Peace Council except a couple of thousand dollars, and that Mr. Buchanan had stated that he (Buchanan) had personally paid his own expenses in connection with the matter. I asked when Mr. Buchanan had made that statement, and Mr. Carlin replied that he had made it in a public speech.

I told the committee that I would prefer not to answer their request for the grand jury minutes until I had communicated with the Attorney General, and told them that I had had a talk on the subject with the Attorney General. The chairman of the subcommittee told me that he hoped that neither the Attorney General nor I would press an objection to their seeing the minutes of the grand jury in those cases, and said that the minutes, if they should be turned over to them, would be examined in confidence by the subcommittee, so that they (the subcommittee) could determine whether in their opinion there was evidence sufficient to indict the persons who had been indicted.

In the course of this interview the chairman of the subcommittee explained to me that I had not been invited to appear before the subcommittee and had not asked for leave to appear, to which statement I assented, and asked them also to note that my appearance on the occasion in question was at their request and not my own, to which the subcommittee assented.

At the time when I appeared before the subcommittee they had established themselves in quarters in the Federal building in the city of New York and had accompanying them Mr. Buchanan, although, so far as I know, Mr. Buchanan was not present at the executive session to which I was summoned. I was informed also that in practically all their hearings they were attended by David Slade and also by a Mr. Walsh, who, as I am informed, was counsel for Mr. Buchanan. I observe from the printed minutes of the subcommittee that Mr. Walsh is described as counsel for the subcommittee, and in the minutes he stated that he was counsel for Mr. Buchanan.

On Wednesday, March 1, I advised the subcommittee in a letter which I then caused to be delivered to them that I would respectfully decline to give them the grand jury minutes which they had asked me to produce. In this letter I quoted a telegram of instructions to me from the Attorney General, in which he stated that I must respectfully decline to produce these minutes, and stated that Federal grand juries are part of the machinery of the Federal courts and by long-established practice the Department of Justice and district attorneys are bound not to disclose testimony and other proceedings had before grand juries except upon order of court. In this telegram the Attorney General stated further that in the present case both the Department of Justice and the State Department were of opinion that a disclosure of the proceedings before the grand jury would be prejudicial to the public interests.

In the letter in which I transmitted this telegram to the subcommittee I stated that I was personally in entire accord with the views of the Attorney General, and stated further that I was in possession of the minutes for which they had asked, and would appear before the subcommittee and make a record of my refusal to produce the minutes so that the subcommittee could take such action in regard to the matter as they might be advised, in case they wished to test their right to examine these minutes of the grand jury.

In my letter to the chairman of the subcommittee, dated March 4, 1916, I have summarized my views of the conduct of the subcommittee during their visit in New York. There was no assistant of mine called before them who was not subjected to indignity and insult. For instance, Mr. Roger Wood, who was engaged in the trial of an important case, was called before the subcommittee after he had finished his speech to the jury and while the jury in his case was out and subjected to a violent and abusive cross-examination by the subcommittee. I was told by a reporter connected with the New York Tribune that if I desired testimony as to the general manner of the subcommittee I could call on him, as he had just heard the examination of Mr. Wood. He said that he had never heard a "pimp" in a white-slave case subjected to the kind of treatment that Mr. Wood had to submit to at the hands of the subcommittee.

This proceeding, which was ostensibly an investigation of the conduct of an officer of the Department of Justice, was so conducted that no one was notified, summoned, or assigned to represent such officer. No counsel was present to object to any question, whether propounded by a member of the subcommittee or by counsel for Mr. Buchanan; no one was present to call upon the committee to repress the exuberance of any witness who might wander off into hearsay or con-

jecture. The consequence was that not infrequently when a question was put to a witness the result was what happens when a stone is thrown into certain pools in the Yellowstone Park—immediately there spouts up a geyser which scatters liquid mud over a wide area. Naturally in a public hearing so conducted the representatives of the press gather out of the spray whatever may be most derogatory to the officer investigated, since that only makes an interesting story for the readers of their papers.

One of the main purposes of the subcommittee seemed to be to indicate to the public that I was trying to conceal facts on account of my fear of consequences personal to myself.

After they received my letter in which I refused to produce the grand jury minutes and stated that I was under instructions not to do so, the subcommittee called one of my assistants who had been in charge of the grand jury investigation against Mr. Buchanan, and demanded of him the production of the grand jury minutes in the Buchanan case. He respectfully refused to produce the minutes and they thereupon asked him whether his refusal was due to orders which he had received from me. They never disclosed publicly the fact that they then well knew that I was under orders not to give them the minutes, but they deliberately endeavored to create a public impression that I was instructing my assistant to withhold the minutes from them for my own protection.

In the course of the examination of a witness one of the members of the subcommittee asked him how much money he had paid to one of my assistants in connection with a certain case, and how much money he expected to pay him. The astonished witness stated that he had paid no money and expected to pay none. One of the newspaper men asked this member of the subcommittee if he had any foundation for this question, and the member said that he had no foundation and that it was merely a "fishing question."

It is not an unreasonable presumption that the object of the question was to have the newspapers the following day carry headlines such as "Hint of bribery in the district attorney's office," etc.

I might multiply instances of this sort indefinitely. The forms of questions asked by the different members of the subcommittee were as insulting to me and to my assistants as was the testimony of certain individuals who at one time or another had found themselves on the windy side of the criminal law whom they called before them.

Toward the end of their sojourn in New York the subcommittee called before them a newspaper reporter and interrogated him as to a statement which had appeared in his paper. They asked him whether the statement was based on information which he had received from me. They had never done me the honor of asking me whether I had given the newspaper reporter the information or not. The newspaper reporter declined to answer their questions and they attempted to commit him to jail. This was in line with the efforts which they had made to make it publicly appear that I was endeavoring to conceal the truth.

It was after this last performance on the part of the subcommittee that I wrote to them my letter of March 4, 1916, which is a part of the record which is now under consideration.

As to the propriety of my letter to Mr. Carlin of March 4, 1916, I have considered various arguments that have been suggested to

me. It has been said that the letter was disrespectful to the House of Representatives; it has been said that the subcommittee were sitting in a judicial capacity, and that I had no right to impugn their motives but was bound to wait until the end of their deliberations and then present such charges as I thought should be presented against the subcommittee; it has been said that the letter indicated a high state of indignation and was an imprudent and impolitic letter to write.

I have devoted considerable thought to the question of whether this subcommittee was sitting in a judicial capacity, because I would willingly agree that if such were the case it would have been improper for me to make the comments on their conduct which I made in my letter. I am convinced that they were not sitting in a judicial capacity in any sense of the word.

The House of Representatives has the right to investigate any public officer; it has the right to determine whether there are charges against that officer which should be submitted for determination to the court which is established by the Constitution, namely, the Senate. The House of Representatives has no more right to sit in judgment on a public officer than the public officer has to sit in judgment on the House of Representatives. The position of the investigating subcommittee of the House of Representatives toward a public officer is the same as that of a district attorney in regard to cases presented to him for investigation. It is the duty of the district attorney to investigate any case, and, if he is satisfied that a proper case is made out, to present the case to a court for trial. Precisely the same duty rests upon an investigating committee of the House of Representatives when it investigates the conduct of a public officer.

The mode of investigation in such cases is settled by ordinary rules of decency. A district attorney, until he is satisfied that a case is made out which should be presented to a court, is bound to protect the person under investigation from any undue publicity and scandal. If the district attorney starts out without knowing whether an indictment is going to be found or not and institutes a campaign of public newspaper defamation against the person under investigation, I have never heard it claimed that the object of such an attack is not entitled to answer the attack in the newspapers.

If an investigating congressional subcommittee, before it has ascertained whether charges are to be presented to the Senate, chooses to attack the officer under investigation in the public press and to make sneering and objectionable statements against him, and to heap every imaginable insult on him and his assistants, I know of no reason why the public officer should not be entitled to answer the attack in the forum selected by the subcommittee, and know of no reason why the attack should not be answered at the time when it is made.

In the case which I am now discussing the situation was most remarkable. The subcommittee had very frankly placed itself under the entire domination of an indicted Congressman. They permitted him to name their counsel, and then the subcommittee and the worthy counsel vied with each other in the selection of language toward my assistants and myself which I will not undertake to characterize. Any fair-minded man who reads the whole record can select the appropriate adjectives.

I am hardly going too far when I say that the public impression created by the subcommittee was that they had themselves appointed what may be called a sub-subcommittee, consisting of Messrs. Buchanan, Slade, and Walsh, and that this sub-subcommittee practically controlled the witnesses to be called and the methods to be used in examination.

I have had cases by the score where complaints have been made to me by persons whom I knew to have interested motives in making the complaints, which I have fully and carefully investigated. Dozens of such investigations have resulted in the conclusion that the case did not warrant prosecution. The fact that the investigation was under way has been practically unknown in the community, and I have not permitted the persons making the complaints to exploit their charges publicly until I knew that the cases were cases of real merit, in which the grand jury approved of an indictment.

If a district attorney should adopt the methods which were adopted by the subcommittee in this city, every man against whom an enemy saw fit to make a charge would be ruined, whether he should be indicted or not.

It has been said to me by half a dozen people that the subcommittee was endeavoring to give Mr. Buchanan a free rein, so that he could have no complaint about the nature and scope of the investigation. It has been suggested in supposed palliation for the methods of the subcommittee that Mr. Buchanan and his confrères, Messrs. Slade and Walsh, were allowed to do as they pleased, so that they could not thereafter criticize the subcommittee. To me this seems no palliation or excuse.

If the subcommittee abnegated their own powers and turned themselves over to be used by a couple of indicted men and a lawyer of one of them, then the motives of Mr. Buchanan became the motives of the subcommittee. I am convinced that neither Mr. Buchanan nor any of the persons making charges against me ever had the faintest notion that the charges were sustainable. Mr. Buchanan wished to drive me away from prosecuting him and his colleagues. The Slades wished to put an end to the indictment pending in this district against them. If this aggregation of indicted men found a subcommittee of the House of Representatives who were willing to turn over the whole machinery of what was described as an "investigation" to the purposes of the defense of United States *v.* Buchanan et al., and United States *v.* Slade, then the characterization of such a proceeding may, I think, be safely left to public opinion. The excuse that is made for the misconduct of the subcommittee is itself a damning indictment of their performances.

I had no misunderstanding about what was intended nor what was going on. The idea of the Buchanan-Slade combination was to destroy the usefulness of my office and to impede the cases pending against themselves. I find it difficult to escape the conviction that the subcommittee lent itself to their purposes and joined in their efforts to publicly malign and slander and defame myself and every one of my assistants who had had charge of any part of the prosecutions in which Mr. Buchanan and the Slades were interested.

I thought at the time that I wrote my letter, and I think now, that it was my duty publicly and immediately to answer in the press the public and scandalous attack which had been made on me and

my assistants through the medium of this so-called "investigating committee."

I do not deny that my letter of March 4, 1916, was written while I was in a state of intense and violent indignation at the treatment to which I and my assistants had been subjected. I have thought it over in cooler moments since writing it, and I find in it nothing to regret and nothing to retract. There is not a word in it which is not true. Under the same circumstances I should write the same letter again, and it is my honest opinion that any investigation by Congress should be rather into the actions of the subcommittee which sought to bring public disgrace upon my assistants and myself than into my own resentment of their methods.

This whole case is a novel and extraordinary one. There have been Members of Congress who have had to face the criminal courts, but there was never one before who resorted to defense by impeachment. I am not the only district attorney whose duty may require him to present to a grand jury charges against a Member of the House of Representatives. Mr. Buchanan is not the first Member of the House of Representatives who has violated the Federal law, and there may be other Members of that House who will find themselves in Mr. Buchanan's predicament.

I wish to present flatly and clearly to your attention the sinister and equivocal situation which is presented in this case. Defense by impeachment seems to be a novel one and one which is available only to a Congressman and to no other violator of the law. All that the indicted Congressman has to do, if the present precedent is to be sustained, is to rise in his seat and say that he "honestly and sincerely believes" that the district attorney in charge of his prosecution is guilty of every crime on the statute book; the indicted Congressman is not to be called upon for any specification beyond a statement from himself that he "honestly and sincerely believes" in the guilt of the prosecuting attorney. Of the indicted Congressman is willing to make such a general statement, and if the precedent in this case is to be followed hereafter, the path of a district attorney in whose district a Congressman is indicted is to be made a very thorny one. The "honest and sincere belief" of the indicted Congressman is to result in an expedition of fellow Congressmen to the district where the indictment is found, and all of the offscourings of the criminal courts where the district attorney has practiced are to be drawn together, not to substantiate charges against the district attorney, but to find out whether any charges can be drummed up.

Defense by impeachment, as I have said, is a novel defense. It is my unfortunate lot to take part in the first case of this character. At whatever discomfort to myself, it is my intention to see this case to the end. Surely the House of Representatives does not contemplate establishing the precedent that violators of the criminal law, if they happen to be Members, will find in it a "White Friars" or "Alsatia" which will be their sanctuary against prosecutors who seek to apply that law.

Unless the proposition which it is now sought to make a precedent be definitely and forever repudiated by the House of Representatives, I do not believe that there will be many prosecuting officers found who will have the temerity to perform their sworn duty and present an indictment against a Member of the House of Representatives. The tremendous discomforts for a district attorney which are

involved in this new defense by impeachment are a strong deterring influence to the prosecution of Federal crimes committed by any Member of the House of Representatives.

In the case in which we are now interested there is an added element. If a district attorney objects to the abuse and villification which he is to receive from a congressional committee when he performs his duty and if he protests with indignation against his treatment, he is to be hauled before the House for contempt.

Let me add to this a feature of the case to which I first adverted: An ordinary defendant who has not the advantage of belonging to the House of Representatives can not secure the minutes of the grand jury which indicted him except upon the order of the court. Under the novel practice which is now proposed a Member of the House of Representives who is indicted can, on the mere assertion of his innocence and after making an abusive speech about the district attorney who indicted him, have a committee appointed of which he is practically ex officio a member to examine the minutes of the grand jury and ascertain whether in the opinion of that committee the Member of Congress should have been indicted.

I have always realized that the extraordinary attack which the subcommittee made upon me and my office was not directed against me personally. I had the advantage of a slight acquaintance with one of the members of the subcommittee and did not know the others at all, and, so far as I know, there was no personal animus in the matter whatever. What has been done therefore raises a matter of principle vastly more important to the administration of justice in this country than any personal interest which I or anybody else can have in it. It must be determined before this proceeding is over whether a district attorney shall fear for his official life when he does his duty and presents charges against a Congressman, or whether the House of Representatives shall finally resolve to let justice take its course when one of their Members comes in conflict with the criminal law of the United States.

Respectfully submitted.

H. SNOWDEN MARSHALL.

APRIL 10, 1916.

Mr. MARSHALL. I wish to make a statement, Mr. Chairman, in regard to my former letter of March 4, which I wrote, and which you are now investigating. There have been statements made that it was intended to reflect on the whole House of Representatives or on the whole Judiciary Committee. Those statements, as I have explained in the letter to Mr. Webb, which is a part of the record, are unfounded, and I wish to say in regard to this statement that the same letter which I wrote to Mr. Webb applies to it. You could take a distorted sentence out of the statement and draw the inference that it was intended as a reflection on the House of Representatives, but it is nothing of the kind. It is my statement of my view about Mr. Buchanan and the subcommittee and the proceedings of the subcommittee in the city of New York. If anybody has any doubt about that, I should like to make it as clear as I possibly can. I feel perfectly confident that the conclusion that Congress will come to about this whole matter will be a correct and just one. I have a high respect for the House of Representatives, and do not think it

all inconsistent with that high respect to criticize the conduct of some Members of the House, as I have done in this case.

The CHAIRMAN. Is there anything further, Mr. Marshall?

Mr. MARSHALL. I have looked over this testimony which you gave me. I have only had about an hour to do it, because I have had to take up an urgent matter. I would be very much obliged to the committee if they would permit me to take it away and to send you a statement about some inaccuracies which I think are in this record.

The CHAIRMAN. Statements in the record?

Mr. MARSHALL. Yes, sir. I personally do not know about them, but in regard to which I think erroneous statements have been made. I could not do that to-day; but I can probably mail you by to-morrow afternoon or the day after a statement.

The CHAIRMAN. We have to report in a few days.

Mr. MARSHALL. I will have to forego any comments on it unless I can have the time.

Mr. GARNER. He could probably send it back by to-morrow.

The CHAIRMAN. We can bring those gentlemen here and give you an opportunity to cross-examine them?

Mr. MARSHALL. They are speaking of things that I do not personally know about.

Mr. STERLING. Have you read the evidence taken before the subcommittee?

Mr. MARSHALL. I have.

Mr. STERLING. Could you indicate to this committee some of the things of which you complain?

Mr. MARSHALL. Yes; I could. I am not prepared to do it in detail. I will give you one or two of them.

The CHAIRMAN. Before you proceed, I want to ask you one or two questions. You wrote the letter, I understand from your statement, of March 4, 1916, addressed to Mr. Carlin, chairman of the subcommittee in New York?

Mr. MARSHALL. Yes, sir.

The CHAIRMAN. You also wrote the letter to Mr. Webb, chairman of the committee, on March 10, 1916?

Mr. MARSHALL. I do not remember the date. I only wrote him one letter, and that is right, I have not any doubt.

Answering your question, if you will turn to page 253, you will find one of the things which I have alluded to as being wrong. There was a witness on the stand by the name of Anderson, and if you will look at the middle of the page, you will see the question by Mr. Gard:

How much did you pay Mr. Hershenstein for his services?

Mr. Hershenstein is an assistant of mine who was conducting a public case in which this witness was interested. You will see that Mr. Anderson replies in astonishment:

What did I what?

Mr. GARD. What did you pay Hershenstein for his services.

I suppose there must have been an answer beyond that.

Mr. ANDERSON. Up to the present I have not offered him any pay.

Mr. GARD. That is interesting. How much do you intend to offer him?

Mr. ANDERSON. That I intend to offer Mr. Hershenstein?

Mr. GARD. You said "Up to the present I have not offered him any pay." How much do you intend to offer him?

Mr. ANDERSON. I do not intend to offer Mr. Hershenstein anything. He has not asked me for a thing.

Mr. GARD. We are glad to know that. You said up to the present time you had not offered him anything.

Mr. ANDERSON. Did I state that? Well, I do not intend to offer him. He has not made any request for a cent from me.

Let me add something that I know by hearsay about the suggestion that my assistant was to be paid money in regard to a public case. Right after that—I get this by hearsay, but I can produce the witness, if needed—one of the newspaper men went to Mr. Gard and said "Did you have any foundation for that question?" And he said "No; it was just fishing." The following day Mr. Gard sent for the reporter of the Herald, as I am told, and said "Why don't you people on the newspapers treat us more fairly in New York?" The Herald man said "You want a frank answer to that question?" Mr. Gard said he did. He said, "Well, I understand, Mr. Gard, that you are a lawyer. You remember when I asked you about that question yesterday when you intimated that Mr. Marshall's assistant had been bribed and you told me that you had no foundation at all for that question, if a lawyer in any court that I know anything about should make an intimation of that sort the court would certainly reprove him and might disprove him. As long as you continue to run your investigation along lines like that the newspapers are likely to continue with you as they have." That is one thing.

The CHAIRMAN. That was hearsay?

Mr. MARSHALL. It was told to me and I believe it.

Mr. STERLING. Mr. Anderson was connected with the Bard and Keen case—was not that the name?

Mr. MARSHALL. There were two men, Keen and Bard.

Mr. STERLING. That is right. Well, one of your assistants did represent one of those film companies in a civil capacity?

Mr. MARSHALL. He represented none of the film companies.

Mr. STERLING. He represented the Colorado Film Co.?

Mr. MARSHALL. The company which had a claim against Keen and Bard, back in November. The film companies that made the complaint against Bard and Keen were California companies, of which Mr. Anderson was the representative.

Mr. STERLING. Mr. Smith was there representing the Colorado company or the Pike's Peak Co. Mr. A. M. or A. D. Smith, in a civil capacity?

Mr. MARSHALL. That was back in November. I will tell you exactly what occurred, if you will allow me.

Mr. STERLING. Certainly.

Mr. MARSHALL. There was a complaint against Bard and Keen for using the mails for a scheme to defraud. The complaint was made, as I recollect by Mr. Anderson, who represented some of their affiliated film producers in California. On Mr. Anderson's complaint Bard and Keen were arrested. They were represented by Mr. Henry Wise. He came to me and told me that they claimed that Mr. Rodger Wood had come to them in the autumn and had represented certain people who had civil claims against them. I immediately looked into it and found that the complaint was an entirely different matter and that the complaint from Anderson was an entirely different matter from the civil case in which Mr. Wood had been interested, but I said, inasmuch as he was one of my assistants, under all the circumtsances,

I would like to deal with the case with the greatest care; and I told Mr. Wise that I should like him to agree with me on some lawyer that he and I both knew and both respected, who could confer with me and decide whether it was or was not a proper ground of complaint under section 215 of the United States Criminal Code, the mail-fraud statute. Mr. Wise suggested that I confer with Mr. William L. Wemple, formerly assistant attorney. Mr. Wemple and I came to the conclusion that while there might be a case for the civil courts, the case was a pretty doubtful one under the mail-fraud statute for various reasons. I do not suppose that you care to be burdened with them.

Mr. STERLING. Then, Mr. Wood did represent somebody who had a claim against Bard and Keen?

Mr. MARSHALL. Yes, sir; I think in October or November.

Mr. STERLING. And he acted as attorney in that capacity?

I have read this record over carefully, except the last 25 pages which I have not yet been able to read. As soon as it developed that there would probably be criminal proceedings, Mr. Wood withdrew from that representation.

Mr. MARSHALL. I think he withdrew long before that.

Mr. STERLING. There was not a thing improper——

Mr. MARSHALL (interposing). He withdrew before there was any thought of criminal proceedings.

Mr. STERLING. It may be he did. I am willing to say that Mr. Wood acted with entire propriety, as far as this record shows. Mr. Gard, I think, had that in mind. Your office had acted as attorney in a civil matter for some of these people who had claims against Bard and Keen. I have no doubt if he had received pay for that it would have been perfectly proper and that, I think, Mr. Gard had in mind when he asked Mr. Hershenstein, another assistant of yours, whether or not he had been paid. I do not think you ought to impute to Mr. Gard any insult on his part. Mr. Gard is a man of very refined tastes, I think.

Mr. MARSHALL. I have never met him, except in connection with this case.

Mr. STERLING. That is the impression I have of Mr. Gard. When I read this it occurred to me that if the other matter had not been in this record about Mr. Wood, it would have occurred to me that Mr. Gard had gone beyond good ethics. But when I consider what had occurred with reference to both, Mr. Gard may have had in mind that Mr. Hershenstein had also represented these people in a similar capacity coming from the same office.

Mr. MARSHALL. The statement which was told to me was that it was merely a fishing question and had no foundation for it. That is what they said to me. There are one or two things I can do now——

Mr. STERLING (interposing). Can you turn to some other points in the record?

Mr. MARSHALL. I have a marked copy, and if you will permit me to do this more carefully, I will send it to you.

The CHAIRMAN. What time can you get that statement back; the day after to-morrow morning?

Mr. MARSHALL. I have got to get back to-night, and I could do that to-morrow, if necessary.

Mr. GARNER. We are limited to the 14th of April to make a report to the House. We are required to make a report on that date.

Mr. CRISP. I think in the interest of all concerned, if the members of the committee agree with me, if necessary, I will ask the House to extend the time 10 days, and to allow us 10 days longer in which to make our report.

The CHAIRMAN. We do not want to press you unnecessarily, Mr. Marshall.

Mr. MARSHALL. I am in a difficult position with several urgent cases in the circuit court of appeals, but I can manage to get this in, if it has to be done, but it will not be as complete as I would like to make it.

The CHAIRMAN. Is there anything you desire to say in reference to the letter?

Mr. MARSHALL. No; I have made my statement about the letter.

The CHAIRMAN. It is only something you want to say about the Buchanan matter?

Mr. MARSHALL. In reference to the statement made——

The CHAIRMAN (interposing). Made by the Congressman?

Mr. MARSHALL. By the Congressman; yes. I do not know whether it is of any importance, but on the question of whether an effort was made to imprison the newspaper reporter, I have here the statement of the United States marshal, and of the deputy United States marshal, to whom the prisoner was turned over.

The CHAIRMAN. You might leave that for the record.

Mr. STERLING. It does not appear in the record that the committee ordered the Sergeant at Arms to commit the prisoner to the United States marshal, and one of the members of the subcommittee stated to this committee that no such order had been made by the subcommittee.

Mr. MARSHALL. The statement of the United States marshal is that after his deputy had refused to receive the prisoner, the marshal was called before the committee, and they inquired why he refused to receive the prisoner, and demanded an explanation of that. I have here the statement of the marshal. The statements I have here are statements of United States Marshal McCarthy and United States Deputy Marshal McDonough.

(The statements referred to are as follows:)

STATEMENT MADE BY UNITED STATES MARSHAL MCCARTHY, MARCH 23, 1916.

On March 3, 1916, L. R. Holme, known to me to be a reporter engaged by the New York Times, was brought to my office in the custody of the Sergeant at Arms (Hon. Robert Gordon) of the House of Representatives, and my chief deputy was requested to place the said Holme in custody by the said Sergeant at Arms. My chief deputy refused to place him in custody and immediately thereafter recounted to me the fact of his refusal, and I agreed with him that he had acted properly.

Some few minutes thereafter I was notified that the subcommittee of the Judiciary Committee of the House of Representatives that was holding the hearing in the matter of the charges against H. Snowden Marshall, desired to see me, and I thereupon went to room 323 of the Post Office Building, said court room being used by the said subcommittee. At the hearing were Congressmen Carlin, Gard, and Nelson. Congressman Carlin, being the chairman of the said subcommittee, saw me as I came into the court room and beckoned to me to come up to him on the bench, which I did. We held a conversation (whispered) in which the following is practically what was said by Congressman Carlin and, in turn, by myself:

Congressman Carlin said that he did not desire to place me in an embarrassing position by putting me on the witness stand and putting me under oath as to the reasons for my refusal to comply with the committee's desire that I put Mr. Holme, the said New York Times reporter, under arrest, and asked me what my explanation for it was. I stated to him that under the law I had absolutely no authority to place the said Holme under arrest as no proper commitment of any kind had been filed in my office authorizing me to make this arrest or put the said Holme in custody. I said to him that the facts of the situation were such that I not only had no right to place Holme in custody but that in my judgment the committee had no power to even place him in the custody of the Sergeant at Arms. Congressman Carlin appeared to me to be somewhat upset by my refusal to obey the command of the committee, and I suggested to him that I could show him the law justifying my position. He held a whispered conference with his fellow members of the committee, and almost immediately an executive session was called, and I was requested to bring to the committee the authority that I claimed to have as justification for my refusal to place in custody the said Holme.

I then went to my office and dictated a statement embodying the substance of section 102 of the Revised Statutes. The committee held a conference on this and I thereafter brought to them the Revised Statutes, which they compared with the statement that I had rendered to them, and, apparently, they acquiesced in the proposition that I was correct in refusing to place under arrest the said Holme.

I then suggested to the committee that in 103 United States Reporter a case could be found that would justify the position that I took. They asked me to furnish that volume, which I did, and after reading the Kilbourne case—that being the case I had in mind—they threw open the hearing to the public and resumed proceedings.

During the executive session Holme was in the court room, but not within hearing of what was going on between the committee and myself, and was apparently in the custody of the Sergeant at Arms in the rear of the court room. When the committee resumed its open session, said Holme was brought to the witness chair and the chairman of the committee said that the committee did not wish to place Holme in an embarrassing position by continuing his state of arrest; they stated that they had every intention to be kind and courteous to him, and therefore would allow him his freedom until the committee desired to act further in the premises.

STATEMENT MADE BY UNITED STATES DEPUTY MARSHAL (CHIEF) JOSEPH P. MCDONOUGH, MARCH 23, 1916.

On the day in question, I presume it was March 3, 1916, Mr. Gordon, the Sergeant at Arms of the subcommittee of the House of Representatives, came to the marshal's window and informed me that he had a prisoner that he wished to turn over to the marshal. I said, "What authority have you to present to the marshal for the marshal to receive the prisoner?" He said the committee directed it, and I said I would not receive the prisoner unless a warrant was presented with him; that is the sum and substance of the thing. He turned around and walked out, and it was all over.

Later, John Noon (a deputy marshal) came in and said that the committee wanted to see me, and I went to the committee and told them that I represented the marshal, and they said they wanted to see the marshal, and I came back, and the marshal was engaged, and after the marshal came out of his room I told him that the committee wanted to see him.

There seems to be some difference of opinion about what took place on the occasion when I was called before the subcommittee at an executive session. I have prepared a memorandum. I have not made it very complete in the statement which I have made to the committee. I prepared a very careful memorandum shortly after the occurrence, within a week after the occurrence, which I would like to read to the committee. I am sure I have in there everything that happened. Possibly I have some things in a different order from the way in which they occurred. This is a memorandum of my best recollection of everything that occurred between myself and the subcommittee.

(The memorandum referred to is as follows:)

MEMORANDUM.

On Monday, the 28th of February, 1916, at about 4 o'clock in the afternoon, the sergeant at arms of the subcommittee of the Judiciary Committee of the House of Representatives came to my office and stated to me that the subcommittee was in executive session and desired to see me. I went to the room in which the said committee was sitting and was introduced by Mr. Carlin—whom I had known before—to the other two members of the committee, Messrs. Gard and Nelson.

When I first went into the room Congressman Reardon and United States Marshal McCarthy were present, but they both retired from the room, leaving the committee, myself, and, I think, the sergeant at arms in the room.

Mr. Carlin stated to me that the committee was investigating charges made against me by Congressman Buchanan. He said that the committee had not asked me to appear and that I had not asked to be represented. I told him that that was true, and that I would like it to be understood that my appearance on this occasion was at the request of the committee. To this all the members of the said subcommittee assented.

Mr. Carlin then stated that it was the practice in impeachment proceedings to make a full investigation, and that at the end, if any facts developed which required explanation, the accused official was given an opportunity, if he wished to do so, to present his side of the matter to the Judiciary Committee before it took action.

Mr. Carlin asked me if I had seen the charges of Mr. Buchanan, and I replied that I had not seen any charges nor been served with any charges. He then said that he had them with him, and suggested giving them to me, and I asked him to send them to my office. He seemed rather insistent on giving them to me and had the Sergeant at Arms take from a satchel a copy of a Congressional Record of a date which I do not recall, which contained a speech of Congressman Buchanan moving for my impeachment on some 42 different charges of bribery and corruption. I took the Congressional Record with me when I left.

Mr. Carlin then said Congressman Buchanan had charged me with everything except rape, and that I was too old for that. At this witticism Congressman Carlin and the other members of the committee broke into laughter, in which I did not join.

Congressman Carlin then said that one of the charges against me was that I had caused Buchanan to be indicted without any evidence to support any indictment, and that the committee desired to see the minutes of the grand jury for the purpose of dealing with this allegation. In response to this, I told the committee that they could clear up at once the whole question of whether Congressman Buchanan had been indicted without evidence by requiring him to answer one single question, namely, where did the money come from with which the so-called Labors Peace Council, of which he was the president, had been financed, and what had been done with the money. Congressman Carlin replied that Congressman Buchanan had denied that the Labors Peace Council had any money except a couple of thousand dollars, and that he had never had any of it and had paid his own expenses. I asked Congressman Carlin where Congressman Buchanan had made this denial, and he said that he made it in a public speech. I told Congressman Carlin that before I replied to his request for the minutes, I would communicate with the Attorney General, with whom I had already had a talk on this subject, and that I would advise him as soon as I heard from the Attorney General. He said that he hoped that neither I nor the Attorney General would insist on withholding the minutes from the committee, and said that the minutes would be read only by the subcommittee themselves and shown to no one else. I told him that I would take his request under consideration, and asked him how long the committee expected to be in this city. He said that they were trying to get away as soon as they could, and hoped to be finished by the ensuing Thursday. I told him that I would write immediately to the Attorney General, and would probably have a telegram the next day.

I asked the committee if there was anything further that they required of me, and they said there was nothing, and I withdrew from the room.

I then read the speech of Congressman Buchanan embodying the charges against me and returned the document to Congressman Carlin, with a letter of which the following is a copy:

FEBRUARY 29, 1916.

GENTLEMEN: I have the honor to return herewith with my thanks the copy of the Congressional Record of Wednesday, January 12, which you were kind enough to lend me yesterday.

I do not observe among the charges any charge that the indictment of Buchanan and others was brought about as a reprisal for Buchanan's first motion to impeach me; consequently, I suppose that this charge is evolved from the inner consciousness of some other person or persons.

Respectfully,

H. SNOWDEN MARSHALL,
United States Attorney.

Hon. C. C. CARLIN,
Chairman Subcommittee of the Judiciary Committee,
House of Representatives,
Room 323, United States Courthouse and Post-Office Building,
New York, N. Y.

This letter reminds me of the fact that during the talk in regard to the charges against me Congressman Carlin stated that one of the charges was that I had caused the indictment of Buchanan as a reprisal for the first motion which he made in the House of Representatives to impeach me.

I have omitted to state that Congressman Carlin stated to me that I was charged with having brought about the indictment of a woman of the name of Rae Tanzer without any evidence and the purpose of putting an end to the civil suit which she had brought against one James W. Osborne, said to be a close personal friend of mine. He said that he wished to see the minutes of the grand jury that found that indictment, and, I think, he also asked for the minutes of the grand jury which found the indictment against the lawyers of this woman, the Messrs. Slade.

On the ensuing day, after the committee left the building, I received a telegram from the Attorney General, and I immediately wrote a letter to the chairman of the said committee, as follows:

FEBRUARY 29, 1916.

SIR: Yesterday I was asked to appear before your honorable committee and was asked to produce the minutes of the grand jury in the case of United States *v.* Rintelin, Buchanan, Lamar, and others, and also the minutes in the cases of the United States *v.* Rae Tanzer and United States *v.* Slade and McCullough. At that time I stated to your committee that I would defer answering your request until I could confer with the Attorney General.

I wrote to the Attorney General yesterday afternoon, relating the substance of my talk with your committee, and received this afternoon after the adjournment of your committee and too late to bring it to your attention a telegram, as follows:

"Your letter 28th received.

"Federal grand juries are part of the machinery of the Federal courts, and by long-established practice this department and district attorneys are bound not to disclose testimony and other proceedings had before grand juries, except upon order of court. In present case, moreover, both this department and State Department are of opinion that a disclosure of the proceedings before the grand jury would be prejudicial to the public interests. Accordingly, you are instructed to respectfully decline the committee's request. You may show this telegram to the chairman of the committee."

The original of this telegram is at your service if you desire to see it.

I do not know whether I understand the situation before your committee, but if I am correctly informed Buchanan, who is one of the defendants in this case, has stated that he is innocent, and that therefore there could not have been any evidence before the grand jury which indicted him. From this fact this committee draws the inference that he was indicted without any evidence before the grand jury, and on account of this inference your committee asks for the production of the minutes of the grand jury. In like manner I understand that your committee has been informed by Mr. David Slade that both he and Rae Tanzer were innocent of the crimes for which they were indicted, and from this evidence your committee draws the inference that there was no evidence before the grand jury which indicted these persons. I totally disagree with this reasoning and consider the inference which you draw from Buchanan's uncorroborated statement to be utterly unwarranted.

I am myself in entire accord with the views of the Attorney General as expressed in the foregoing telegram, and I therefore respectfully decline to produce the minutes of the grand juries for which the committee has asked.

If you desire to test the question in any way, I will state for your information that all of the minutes for which you have asked are under my control, and if you desire

me to do so I will appear before your committee and make a record of my refusal to produce the minutes, so that you can take such action in regard to the matter as you may be advised.

Respectfully,

H. SNOWDEN MARSHALL,
United States Attorney.

Hon. C. C. CARLIN,
Chairman Subcommittee of the Judiciary Committee,
House of Representatives,

Room 323, United States Courthouse and Post-Office Building, New York, N. Y.

Beyond the interview above described, my published letter to the committee of March 4, 1916, and the foregoing, I have had no communication directly of indirectly with the said committee.

Mr. STERLING. I would like to ask you another question. I ask you this to get your view of the legal phase of it.

I think you were entirely right in refusing to show the subcommittee the minutes of the grand jury. But it does seem to me that this committee were within their jurisdiction when they asked anybody who knew whether or not there was any testimony. I do not think they had a right to know, and it was not material, what testimony there was, because that was purely in the conscience of the grand jury as to whether or not there was enough testimony. One of these charges made by Buchanan is that the indictments were found at your instigation, and through your influence, and that no evidence was presented to the grand jury.

I believe it would have been perfectly proper for you or your assistants to say to the subcommittee—and I think one of your assistants did say to the subcommittee—that there was evidence. I believe the subcommittee was within its jurisdiction in asking that one question as to whether or not there was any evidence on which to base the indictment. Do you not think so?

Mr. MARSHALL. I suppose it would be assumed if 23 gentlemen on their oaths presented an indictment they would have had evidence to support it.

Mr. STERLING. That is the presumption.

Mr. MARSHALL. That is the presumption. But this is the feature of the case which I want to bring to your attention. If A, B, C, or D is indicted, and he gets up and says, "There is no evidence; I am innocent; I plead not guilty," what court would give him a right to make any inquiry into what the grand jury did, or how it had voted. ? That was one of the inquiries. What superior right has a Member of Congress ?

The CHAIRMAN. Suppose you had pleaded in abatement to the indictment that it was found arbitrarily and without evidence, would not the court have it investigated ?

Mr. MARSHALL. I suppose so, if there was anything to support it except a mere statement that I was not guilty. That is all there was to support this inquiry into what the grand jury had done. That was absolutely all there was. There was not another thing, except that Buchanan in a public speech said he was innocent, and that was apparently thought to give the subcommittee the right to call the grand jurymen before it and ask them how they had voted, when they began to take up certain classes of evidence, and at what time certain names were voted for, and what they did. They asked questions about what happened with reference to things that I never knew about.

Mr. STERLING. This is the point about it: These charges that Buchanan made—I think those questions were along the line of the charges—the charges he made were that it was through your influence that indictments were found without any evidence before the grand jury. I agree there is not a thing in the record to show that the charge is true. The charge is made, and the subcommittee is appointed to investigate to see whether it is true. It seems to me they had a perfect right to inquire as to whether or not there was any evidence presented. I agree that what the witnesses said before the grand jury would not have been proper for the committee to inquire into; but that was not necessary with reference to the charges. But it seems to me that the subcommittee, along that line, did not go very far out of their jurisdiction.

Mr. GARNER. Mr. Marshall, listening to the statement you read, I have the idea in my mind that the basis of your entire criticism of the committee is the idea that Congress is lending itself to an effort to shield one of its Members?

Mr. MARSHALL. I am glad you asked me that question, because I want to correct that impression, if such an impression has been made.

Mr. GARNER. Take some of the things in your statement, Mr. Marshall, and I think that is a just inference that can be drawn from your statement, that if Congress is going to take up for investigation charges made by an indicted Congressman from any State in the Union against a district attorney—defense by impeachment—and the committee is going to follow out the allegations in order to determine whether impeachment proceedings lie against the district attorney, they are going to intimidate the judicial branch of the Government and destroy the opportunity of administering justice, and, as far as the Member is concerned, the basis of the entire matter is the action of Congress in ordering an investigation to determine whether they should impeach you.

Mr. MARSHALL. I am very glad you asked the question, because I want that to be entirely clear.

The House of Representatives has the right to vote for an investigation to determine whether an officer shall be impeached on any ground at all. It is none of my business whether it does or does not. A Member can come up and say, "I dreamed the district attorney is a bad man, and I believe in dreams," and if Congress believes in dreams, it has to have the dream investigated, and that is none of my business.

I do not pretend to criticize the motives of Congress. I do criticize the motives of the man who moved the impeachment resolution. I have no doubt about what his motives were, but as far as the right or the power of Congress to order the investigation, that is absolutely outside of anything I have any right to criticize or to discuss.

But when you take that and assume, as it may hereafter turn out to be, that that impeachment proceeding started on the motion of an indicted Congressman who submitted no evidence to Congress, except the statement he made—if you add to that situation the sending of a subcommittee to the town where the district attorney lives, the nomination of the counsel of that subcommittee by the indicted Congressman, the preparation of the case to be submitted to the subcommittee by the counsel for the indicted Congressman, the visit of the subcommittee to the town where the district attorney lives, and the

proceedings that thereafter occurred, the calling of man after man who had been in trouble with the criminal law in force where that district attorney has practiced—if you add all those things together and make a precedent of this procedure for future cases, I guarantee there will not be a district attorney who will prosecute a Congressman.

Mr. GARNER. Are you familiar with the impeachment proceedings in Congress in the past century?

Mr. MARSHALL. I know very little about them.

Mr. GARNER. Suppose it turns out that the proceedings in this case are along the line of the precedents that have been followed in other impeachment proceedings, and let us suppose that the charges that have been made against you are of an impeachable nature, and Congress has seen proper to authorize an investigation of these charges, do you not think the committee ought to exercise every possible effort to ascertain the truth or falsity of the charges and to report to the House of Representatives which created it?

Mr. MARSHALL. Certainly.

Mr. GARNER. The question of employing counsel is one of ethics or advisability, and according to the precedents heretofore the prosecuting witness or the man who made the charges has been allowed counsel of his own selection. There is nothing outside the precedents in this case.

Now, let me ask you one other question.

Mr. CRISP. Was it not true that Congress appointed a subcommittee to investigate the charges preferred against United States Judge Speer, in my own State of Georgia, and Judge Dayton, in West Virginia, and did they not send special committees to hear testimony and report on those charges?

Mr. MARSHALL. Yes.

Mr. GARNER. A subcommittee of the Judiciary Committee was appointed.

May I ask you this other question, and if you think it is improper, or if you do not care to answer it, you may so state. I want to ask if it was a fact that a certain district attorney, whether it be you or some other district attorney, procured an indictment through his influence with the members of the grand jury, without any evidence, would not that be a serious offense?

Mr. MARSHALL. Perfectly outrageous, and an offense for which he ought to be immediately impeached or removed.

Mr. GARNER. This charge was made by Buchanan in the impeachment proceedings against you. So far as I am acquainted with the precedents, all that has been necessary heretofore to impeach an officer of the Government has been for a Congressman to rise in his place and present allegations sufficient to justify the impeachment. Then the custom has been for the Judiciary Committee to look into the matter in order to see whether it should recommend an investigation. That was done in this instance. Everything in your case that has happened has occurred in similar proceedings before had in investigations heretofore made. So far as I know, this is the first time that the good faith or even the wisdom of Congress has been questioned by the person against whom impeachment proceedings have been brought. I imagine in this case it would not have been so if you had not been conscious of your innocence and that the man was under indictment in your own court?

Mr. MARSHALL. Stop there, if you please, and think about it. Think what it means that a man who is under indictment, who has made a foolish lot of preliminary charges against me, when he heard he was about to be indicted, which he has dropped after he is indicted, and mutiplies those charges, making a total of about 42 different crimes——

Mr. STERLING. Thirty-nine.

Mr. MARSHALL. He comes up and says, "I am innocent," and thereupon the main object of the subcommittee that he sets in motion seems to be to get the full minutes of the grand jury.

Mr. GARNER. Let us take that proposition. I do not think you do the subcommittee justice there, Mr. Marshall. I happen to be well acquainted with all the gentlemen on the subcommittee. Mr. Gard was on the bench in the State of Ohio and served there with great distinction, so the story goes. The other gentlemen on the subcommittee have been Members of the House for quite a while. Did they not say the object of getting these minutes was for the purpose of ascertaining the facts, as alleged in the complaint or impeachment proceedings, that an indictment was found without any evidence before the grand jury?

Mr. MARSHALL. Yes.

Mr. GARNER. Did they not also state they wanted that for their own exclusive use and benefit and not for the purpose of letting Mr. Buchanan or any other person have that knowledge?

Mr. MARSHALL. That is quite true.

Mr. GARNER. If that was their object in trying to establish this one fact, this gravest charge in the entire 39 charges, in my judgment; if they were trying to get that one fact, not for the purpose of giving it to Mr. Buchanan or anyone else, but for the purpose of reporting to Congress on the question as to whether impeachment proceedings should be filed against you—in that, do you not think they were within their province in trying to ascertain that fact?

Mr. MARSHALL. I really can not see that they were, to save my life. They had the word of an indicted man to set them in motion, and the oaths of 23 citizens—leaving me out of consideration—against that, and why they were entitled to go into the secrets of the grand jury simply on the say-so of an indicted man is beyond me.

Mr. GARNER. You seem to lose sight of the fact that they were doing what the House of Representatives had told them to do. You are questioning now the good faith or wisdom of the House of Representatives in asking them to determine whether the facts charged by Buchanan were true. It is the whole House of Representatives you must complain against.

Mr. STERLING. Do you think we ought to have questioned the motives of Buchanan? I know how you question them, and we, privately, may have our views about it, but here is a fellow Member of the House who rises in his place on the floor and prefers charges. Do you think we ought to question his motives about it and say to him, "You have made these charges because Mr. Marshall has presented a criminal case to the grand jury against you." Do you think we ought to do that?

Mr. MARSHALL. That is a thing I would rather not express an opinion about. It is clearly outside of my——

Mr. CRISP (interposing). Judge Sterling, is it not true that it was not the individual rising on the floor of the House, preferring charges

against Mr. Marshall, which influenced the House, but was it not the Representative acting in his official capacity, making the charge, which influenced the House?

Mr. MARSHALL. May I come back again to the question Mr. Garner asked just now? The charges that were made—I read the debate, I think of January 12, in the Congressional Record, when the charges were made and filed against me. He did not dare to say I had indicted him because he had moved to impeach me, and there were Members of the House who called attention to the fact that that was not in the charges, and that idea was never suggested until after the charges had been filed and when these gentlemen of the committee handed me the copy of the Congressional Record which they gave me I looked it over and I found there was not a word in the charges that charged me with having had this defendant indicted because he had moved to impeach me.

Mr. GARNER. Possibly you give more consideration to the debates in the House than we do. What we were considering in the House was the charges read from the Speaker's desk against you.

Mr. MARSHALL. That is what I mean now. Take those charges, and you can not find in them any suggestion that Buchanan ever dared to make that I had had him indicted because he moved to impeach me. That seemed to have grown into the situation after he filed the charges.

Mr. STERLING. I think every Member knew when he presented the first charges that there was talk in the newspapers about him having been presented to the grand jury. I had heard it, and I had read something about it in the newspapers. Do you think the Members of the House ought to have questioned his motives because of that fact?

Mr. MARSHALL. I can only say this, if you want my opinion about that. I will assume the same situation to have occurred in cases with which I have to deal. I get a complaint from an interested party. Suppose Jones comes into my office and says he is in a violent row with Mr. Brown and he wants to present charges against Mr. Brown. I find out he has an ax to grind, that he wants to make a collection from Mr. Brown, or has some interested motive, and wants to get me interested. Suppose he is suing Mr. Brown, and while the suit is going on he wants me to jump on Mr. Brown to indict him, and thinks that will help his suit along. I have always said to a man of that kind, "Wait until you get out of your complications and then you bring the case to me, and I will look into it."

I am not venturing to tell you what I think Congress ought to do, but I am simply telling you what I would do in a case of that kind.

Mr. STERLING. I think that would be a matter to consider if it ever came to the trial of an impeachment charge. But all the House could do, it seems to me, would be to start the machinery in motion to take the testimony to see whether or not there was any valid foundation for Mr. Buchanan's charges, and to develop, if possible, any motive he might have had in bringing the charges.

Mr. CRISP. Was that not exactly what Mr. Marshall said he would do, that if anyone made a complaint, he would investigate it? In this case, Mr. Buchanan made a complaint and the House, which, under the Constitution is the body to investigate complaints of this nature, to see whether the House will vote the articles of impeachment, simply proceeded to do what Mr. Marshall said he would do.

Mr. MARSHALL. I said I would tell a man in a case of that kind to wait until he got through the pending proceedings, and then bring his case to me.

Mr. GARNER. Your complaint seems to be not only against the method of the subcommittee, but it seems to be against the action of the House in making an effort to protect Mr. Buchanan. For instance, after relating the proceedings of Congress that were had, you say, referring to the action of the House in ordering impeachment proceedings, "The whole thing seems to me to be a desperate effort to postpone the trial of Mr. Buchanan."

Mr. MARSHALL. I mean it was a desperate effort on Buchanan's part. I did not mean that was what impelled the House to vote for it.

Mr. GARNER. This whole proceeding is leading up to the proceedings of Congress of the 12th of January, and you say, referring to the congressional proceedings, that the whole proceedings seemed to be a desperate effort to postpone the trial of Mr. Buchanan. Of course, that involved the good faith of the House in its ordering this investigation.

Mr. MARSHALL. My language is unfortunate if it created that impression, because I merely meant to say that Buchanan, when he got the resolution through, was making a desperate effort to stave off his trial, and I did not suggest or intimate, and I would be the last one to do it, that the motives of the House of Representatives were the same as those of Buchanan, and when I described the motives of the subcommittee and charged them with the things I charged them with, I did it because they turned Buchanan loose; they did not take the thing in their own hands. They let him do what he pleased. They made his lawyer their associate; they took his witnesses; they never gave anybody else a chance to say anything, and they left a mud bath there for everybody who was opposed to Buchanan, which was left there to ferment.

Mr. STERLING. They had to call the witnesses who had been connected with these things. They may be people in bad repute. I do not know about that. I do not think you ought to find fault with this committee because they called those witnesses. They called your assistants and they would have given you an opportunity—I guess they did so—they would have been glad to have had you come before the committee and make any statement you desired to make.

Mr. MARSHALL. They never said that.

Mr. STERLING. The committee can not select the witnesses. The circumstances determine the witnesses you use—these same witnesses you used in these prosecutions. You used Koogle and his wife to prosecute their attorney. The very same witnesses they called, you used to send people to the penitentiary.

Mr. MARSHALL. I had them corroborated in every corner.

Mr. STERLING. Of course, we have nothing to do with the impeachment charges. All we have to deal with is the question whether or not you are guilty of the conduct charged.

I am free to say I do not think there is anything in your record that casts any reflection on your office. There is nothing sustained. You wrote this letter because you wrongfully assumed this committee was hostile to you. I think you are wrong about that. I

think you have made that one mistake that led to this trouble. That committee is not hostile to you. The committee is fair. They wanted to be fair. The whole trouble comes because you simply assumed that they were hostile to you and going outside of their jurisdiction.

I think they did exceed their jurisdiction when they took the witness Holme into custody, because it was outside the charges they were investigating. But that was a small matter and I would not find any fault with your complaining, although you ought not to have called it "lawless tyranny," because I have no doubt they were acting in good faith, on the spur of the moment. But they had not any right, I think, to take him into custody at all. If he refused to answer when they asked him material questions they should have referred the matter to the House of Representatives.

The CHAIRMAN. That question is not involved here, as to whether they had the right to take him into custody.

Mr. STERLING. Mr. Marshall calls it "lawless tyranny," but it is the thing that instituted Mr. Marshall's letter, I think. He may not have written the letter if that had not happened. I personally regret that you could not have seen your way clear to have withdrawn the letter.

Mr. CRISP. I would like to ask Mr. Marshall if he desires to have the opportunity to cross-examine any of the Members of the House who have appeared before this committee and testified. Speaking for myself, if he does desire that opportunity I am in favor of granting him that privilege. I simply desire to have that appear as a matter of record.

The CHAIRMAN. That is what the record already shows.

Mr. MARSHALL. I do not think of anything now which I desire to ask them. I have only had about an hour and a half to run quickly over the testimony which they have given; but I do not think of anything at all at the moment which I desire to say to them. If I do and if I have time, I will write and let you know about it.

The CHAIRMAN. Mr. Marshall, you are the United States district attorney for the southern district of New York?

Mr. MARSHALL. Yes, sir.

The CHAIRMAN. How long have you held that office?

Mr. MARSHALL. I think I took office on May 7, 1913; about three years.

The CHAIRMAN. You indicted, or caused to be indicted, Buchanan, Fowler, and a number of others for offenses against the Sherman law?

Mr. MARSHALL. I presented the evidence against them to the grand jury, or, rather, my assistants did. I am responsible for what they did.

The CHAIRMAN. After that occurred you were impeached in the House by Mr. Buchanan for malfeasance and misfeasance in office, for crimes and misdemeanors, after that indictment?

Mr. MARSHALL. I suppose so. January 12, I think, was the date.

The CHAIRMAN. Among other things, you were charged with tyranny in the exercise of the functions of your office?

Mr. MARSHALL. I suppose—I do not remember what I was charged with. That is all a matter of record.

The CHAIRMAN. And thereupon the House ordered an investigation of the matter by the Judiciary Committee. You recognize the

right of the House to impeach, following charges made against any Federal officer?

Mr. MARSHALL. Undoubtedly.

The CHAIRMAN. That committee had the power, by act of the Congress, to appoint a subcommittee, which was clothed with all the power of the House in this matter?

Mr. MARSHALL. It certainly had the power to appoint a subcommittee.

The CHAIRMAN. Appointed by resolution of the House itself, authorizing the appointment of the subcommittee. You knew when that subcommittee went to New York that it was the representative of the Congress of the United States?

Mr. MARSHALL. I knew it had been appointed by Congress and had all the power that a subcommittee of the House has.

The CHAIRMAN. And that would be all the power the Congress itself would have, if it were exercising the same duty.

Mr. MARSHALL. That is a question of law. I knew the facts.

The CHAIRMAN. How did you assume what the law was? Did you think this committee was a separate body that might be treated as you saw fit, or was a body that had to be treated as a representative of the Congress of the United States?

Mr. MARSHALL. I thought of the subcommittee very much as a sort of—if you could use analogies—a congressional committee investigating impeachment charges seemed to me to be very much like a grand jury and district attorney combined, to ascertain whether there were charges, and if there were, formulating them and sending them to the Senate for trial.

The CHAIRMAN. You knew that the entire Congress could not go to investigate them and had to act through a subcommittee?

Mr. MARSHALL. Certainly.

The CHAIRMAN. You knew that subcommittee had the power and authority to make that investigation; all the power Congress had itself had been vested in the subcommittee?

Mr. MARSHALL. It had the power given by the resolution under which it was appointed.

The CHAIRMAN. Did you expect to treat the subcommittee one way and the Committee on the Judiciary in another way, that you could separate them in your mind—offend one, but not offend the other?

Mr. MARSHALL. I certainly did. I do not see why——

The CHAIRMAN (interposing). Then you thought the Congress sent out a subcommittee that could be subject to offense and insult, without power to protect——

Mr. MARSHALL (interposing). I did not think that at all.

The CHAIRMAN. What did you think when you offered indignities to this committee?

Mr. MARSHALL. Along that line, I do not remember what I thought. I could not answer your question.

The CHAIRMAN. When you wrote this letter to the subcommittee, were you thinking about the fact that this was a committee of Congress, or that it was a junketing committee, sent up there to protect Buchanan?

Mr. MARSHALL. It is pretty hard to answer a question in regard to what I was thinking.

The CHAIRMAN. What did you say about it in your letter?

Mr. MARSHALL. The letter speaks for itself.

The CHAIRMAN. You wrote the letter on that subject, as it appears in the record?

Mr. MARSHALL. Yes.

The CHAIRMAN. Mr. Holme was a witness called before that subcommittee, and an inquiry was made to him in relation to an article published in the New York Times in which it is said:

It is the belief in the district attorney's office that the real aim of the congressional investigation is to put a stop to the criminal investigation of the pro-German partisans.

Mr. MARSHALL. I am not responsible for that statement.

The CHAIRMAN. You recognize that that statement would be a direct affront to the Congress.

Mr. MARSHALL. Oh, certainly.

The CHAIRMAN. And they were making an inquiry about that in connection with the charges against you of Mr. Holme, and Mr. Holme declined to answer that question, and then you wrote a letter justifying Mr. Holme in his position, and expressing your opinion of the subcommittee. You say this:

What I told him was about as follows.

They had asked whether you had given Mr. Holme the information. You first said:

It is not necessary for you to place anyone under arrest in order to get the answers to the questions which you asked Mr. Holme, because I can and will answer it. I gave Mr. Holme information, part of which he published, and from which he made deductions, so that if your honorable committee has a grievance it is against me and not against him.

Your opinion seems to have been that it was the Congress that was proposing to stop the investigation of the pro-German partisans.

Mr. MARSHALL. I am not quite sure I had even seen Mr. Holme's article at that time.

The CHAIRMAN. You assumed the authority for the statement that it was the Congress that had sent the subcommittee there to stop investigations of that sort?

Mr. MARSHALL. I certainly do not want to be put in that position. Of course, you could work it around to that, but I think that is hardly a fair construction.

The CHAIRMAN. You said further in your letter:

I said that your expedition to this town was not an investigation conducted in good faith, but was a deliberate effort to intimidate any district attorney who had the temerity to present charges against one of your honorable body.

Was it your opinion that Congress had sent these men there, and that their purpose was to intimidate you because some man had been indicted in your court who was a Member of Congress?

Mr. MARSHALL. I do not charge Congress with that. The expedition to the town and the conduct of it were what I was commenting on.

The CHAIRMAN. They were sent there by Congress, to represent Congress.

Mr. MARSHALL. An expedition sent to a place can behave in all sorts of different ways.

The CHAIRMAN. Did you really think that was the intent and purpose of this committee, or were you just angry about this matter when you wrote that letter?

Mr. MARSHALL. I really thought the subcommittee was making a ferocious, venomous, and malignant drive at my office. I was in doubt as to what their motive could be.

The CHAIRMAN. Did you not know their motive was to investigate those questions?

Mr. MARSHALL. If it was they were going about it in the most singular way I have ever seen an investigation conducted, and it did not seem to me they were trying to investigate or to get the truth.

Let me state this, and try to put you in possession of the picture I had there. I saw a committee that had been in Washington taking testimony in secret sessions, in a very decent and respectable kind of way. I saw them come to New York, accompanied by the indicted Congressman who started the thing, and accompanied by these lawyers, and I saw the committee throw their sessions open. I had been standing all through the week a series of bombardments from the committee itself—I am not speaking of the witnesses they called, but I am speaking of the offensive and disagreeable statements the committeemen themselves put in the newspapers about me and about my office. I had realized the thing had a particular significance.

Mr. STERLING. Have you some of those newspaper articles?

Mr. MARSHALL. I have not here; but I can get them for you. I realized if they came there and left that situation, with the public defamation of my office, having conducted the only public part of the proceedings in the town where I live, and then went away, they would have practically succeeded in casting a stigma and a stain on my office that would never be removed whether they went ahead with the impeachment proceedings or not. It struck me that the fact of coming to New York and calling those different men and throwing those hearings open, after having been in Washington and having most of the people who testified in my favor testify secretly, was a use of the committee that Buchanan ought not to have been allowed to make.

The CHAIRMAN. You say further in your letter:

> I pointed out to him that you, contrary to usual practice, had come here and had held public hearings; that among your witnesses you had invited every rouge that you could lay your hands on to come before you and blackguard and slander me and my assistants under the full privilege of testifying before a congressional committee.

You really did not feel they went there for that purpose, did you?

Mr. MARSHALL. I have not any doubt——

The CHAIRMAN (interposing). And that they subpœnaed rouges to injure you?

Mr. MARSHALL. I could only judge of their motives by what they did. Can you imagine yourself—let me ask you this for a moment. Suppose you were trying not to injure a man and find out facts about him and trying to make a rather bona fide investigation as to whether the man was guilty. Can you imagine any safer way to do it wrong than to do what the subcommittee did?

The CHAIRMAN. If they subpœnaed nobody but rouges and thieves to come here, that might be; but did they not subpœna some of the best men in their city?

Mr. MARSHALL. I said among their witnesses; I did not say all their witnesses were rogues.

The CHAIRMAN. Let us get down to the facts. I feel as if you do not want to leave yourself in bad shape in reference to this matter.

Was not that rather an ebullition of passion, growing out of the surroundings, and the opinion you had had of the Buchanan case, rather than a deliberate statement which you would be willing to stand by?

Mr. MARSHALL. I am not going to say to you gentlemen that I was not angry when I wrote that letter, because I was. You can take it and dissect it as you are doing now——

The CHAIRMAN (interposing). I am just reading the body of your letter which comes after the preliminay statement. It is all here to speak for itself.

Getting away from that, because that is an embarrassing proposition——

Mr. STERLING. I wish you would not get away from that, Mr. Chairman. I believe if Mr. Marshall really understood the situation in connection with this matter that he would change his attitude entirely. I know some of the best men in New York testified in that case. Stanchfield is a good man?

Mr. MARSHALL. A first-rate man.

Mr. STERLING. He says your office is run in the best manner. Mr. Wise explained away practically everything charged against you with reference to a certain practice which had been testified about in your office and he and a good many other people speak of you in the very highest terms. That does not indicate to me that this subcommittee was trying to hunt up evidence to damage you.

The CHAIRMAN. Why did you want to make this thing public at the time—this letter?

Mr. MARSHALL. I did it exactly along the line of things of that same sort we have had to deal with in New York many times. This is not the first time such a thing has occurred. We have had prosecuting officers in New York who sometimes have, for the purpose of the destruction of somebody they had reasons to destroy, started very much the same sort of an investigation that this committee was conducting, putting all the evidence against the man in the newspaper, adding their own comments and their own statements about him, and they brought about the ruin of the man, whether the man was ever thereafter indicted or not. I have had to fight some of them, and I have always thought, and think now, that a man under such attack as that, unless he makes a public defense of it at the time, has a stain left on his reputation that never is removed. There will always be——

The CHAIRMAN (interposing). Was not the place for you to make that statement before the committee itself, rather than to write this letter and publish it before they got it?

Mr. MARSHALL. I had in my mind that committee was absolutely hostile from the time they came until they left, and they commenced their proceedings by sending the Sergeant at Arms to bring me, instead of writing me or otherwise asking me to come. They started out by trying to get everything they could out of the grand jury situation, and I was defending that tooth and nail, and was going to keep them from getting it.

The CHAIRMAN. Feeling that the committee was hostile, this letter was made public on your part for the purpose of bringing the committee into ridicule and contempt before the people?

Mr. MARSHALL. It is hard for me to analyze my feelings in regard to that. I would not like to say yes or no to that.

The CHAIRMAN. If it was not for the purpose of discrediting the committee, why did you publish it?

Mr. MARSHALL. I think I have stated the reason. They had adopted the newspapers as the medium of attack. I did not choose them.

Mr. GARNER. In that connection, are you justified in making that statement?

Mr. MARSHALL. I can not see why it is not true.

Mr. GARNER. Let us take the facts. Can you point to any interviews given by the members of the subcommittee in the newspapers calculated to reflect on your office? You have referred to the fact that they gave publicity to the hearing.

Mr. MARSHALL. That is one.

Mr. GARNER. What other fact can you attribute to those three men that would justify that statement on your part?

Mr. MARSHALL. I was going to send you an extract from the minutes of their hearing, calling attention to their own comments and statements, what they said and gave out in the course of the hearing, not what the witnesses said, but what the committeemen said, and that is one of the things I am not prepared now to give you in detail.

Mr. STERLING. There could be no purpose of this subcommittee taking this testimony in secret, because it is to be published for the benefit of the House, anyway.

Mr. MARSHALL. The members of the subcommittee, I have observed in their statements which I was given this morning, said they recognized the propriety, when they called people of doubtful reputations while the committee was in Washington, of calling them in executive session—that they say it was proper for them to do that because until the charges were sustained they did not think it proper to have the hearings public. If they were willing to be guided by that in Washington, under the domination of the whole Judiciary Committee, what happened to the subcommittee in New York, where the public statements would do me the most damage, when they went there with Buchanan and his lawyers and turned the doors open, and turned the floodgates of filth open on me and the people in my office?

The CHAIRMAN. You put yourself in conflict with this committee, to begin with, assuming that the committee was going there for the improper purpose of protecting Buchanan, when, in fact, Congress had sent them to investigate the charges of the tyranny committed in your office. Is not the animus of that letter due to the fact that you were not satisfied with the method in which they were conducting this investigation?

Mr. MARSHALL. That is correct.

The CHAIRMAN. You felt because they were not conducting this investigation in accordance with what you thought was the proper way to do it, that that justified you in publishing a communication that brings the committee into ridicule and contempt—an affront to them and to the body they represent?

Mr. MARSHALL. That is not intended as an affront to the body they represent.

The CHAIRMAN. How can you keep from affronting the body they represent when they are the sole agents of that body and appearing for such duty in conformity with the resolution under which they were appointed?

Mr. MARSHALL. I do not believe, Mr. Chairman, there is one Congressman in ten who if he knew what was done in New York by the subcommittee would approve of it and believe it was right.

The CHAIRMAN. Assuming they would not approve of the particular method in which it was done, yet we have that subcommittee there, acting within the scope of its authority, which it must have been doing in investigating the questions I have called attention to, was it not entitled to the respect of an officer of the Government, or of a citizen even if he were not an officer of the Government, in the discharge of their duties?

Mr. MARSHALL. Of course, your question is to be answered in the affirmative, but is there no remedy if I am right in my view about the procedure I stated? Is there no remedy?

The CHAIRMAN. The remedy you would seem to indicate as the best one would be such an assault upon a committee of this House as to intimidate it and prevent it from the performance of its duties.

Mr. MARSHALL. I never wrote to them until they left town.

The CHAIRMAN. You say in this letter that under no circumstances, so long as you are district attorney, would you permit that committee to have the minutes of the grand jury?

Mr. MARSHALL. Yes, sir.

The CHAIRMAN. One of the very charges against you was that by your tyrannical action you, as district attorney, had forced indictments that were not in accordance with the law. If those indictments were in accordance with law, why was it that you would not be willing to let the minutes be seen?

Mr. MARSHALL. Obviously I could not let the minutes be seen. The case against Buchanan and the others has not been tried yet.

The CHAIRMAN. But that is not the point.

Mr. MARSHALL. There were in those minutes—you may not have read the telegram of the Attorney General—very important and serious matters that were gone into which the State Department did not want to have made public or known to anybody.

The CHAIRMAN. Mr. Marshall, would it not have been your duty as district attorney and a representative of the Government, when called upon by a coordinate branch of the Government in the protection of its honor and dignity against your alleged conduct, to have brought those minutes before that committee and submitted them to that committee, not for publication, but for their inspection simply, in order that they might see that the charge of undue oppression and tyranny against you was not true?

Mr. MARSHALL. I did not think so, and I did not see how, if it should be done, I could protect the minutes from being made a public congressional document.

The CHAIRMAN. That would not have been published in documentary form. You could have submitted them with the understanding that that would not be done.

Mr. MARSHALL. Bear in mind I had the statement made to me by the attorney general that there had been a promise made that those minutes should not be intruded into.

The CHAIRMAN. Is it not a part of the duty of your branch of the Government or the branch of the Government to which you belong to aid the legislative branch of the Government in upholding its power and dignity? Why should there be any conflict at all?

Mr. MARSHALL. I do not see why there should be at all, but in the case of an indictment——

The CHAIRMAN. I understand in the case of an indictment, where there are facts that ought not to be known to the defendants until after the trial, where the secrets of the grand-jury room ought not be disclosed, it is very proper that you should not disclose them in an ordinary way; but there are circumstances under which the court is bound to know what the facts are and the court can order those records brought in, and he maintains that secrecy. Could not you have treated a committee of Congress with the same sort of consideration? Would it not have been the proper thing to do?

Mr. MARSHALL. I do not think so, Mr. Chairman, with all respect, if you will let me rehearse to you what happened. When I declined to give the subcommittee those minutes, I acted under instructions from the Attorney General, who agreed with my point of view, and I said at the close of my letter that I had the minutes and would appear before the committee and make a public record of my refusal, so they might take such steps as they wished to test their right to the minutes.

The CHAIRMAN. We have nothing to do with the Buchanan case except as it incidentally appears here. Do you not know that under the charge against you for tyranny in your office, that was the very gist of the proposition, that there was no such record there; and why, if there was no such record of that sort, if your record was complete and if it showed you had the jurisdictional facts and that you were exercising proper authority, could not you have made a statement then without disclosing even the minutes, that might have been satisfactory to this committee, instead of thwarting the committee in the very purpose for which it was appointed?

Mr. MARSHALL. That was the purpose. If it had to have those minutes, I felt and still feel that it was my duty, whatever the consequence to myself, to keep them from getting those minutes.

The CHAIRMAN. You knew that would keep Congress from knowing the facts, did you not?

Mr. MARSHALL. Knowing the facts, yes; or some facts.

The CHAIRMAN. You did not want Congress to know the facts?

Mr. MARSHALL. It would keep them from knowing the facts until the facts could be properly made public.

The CHAIRMAN. In other words, you set up the power and authority of your office and your right to determine the question above the will of the Congress?

Mr. MARSHALL. I wish you to understand, Mr. Chairman, that I did not act on this thing hastily. I took the advice and instructions of my official chief, the attorney general, and whatever my personal views had been, I was bound to adhere to my instructions. I do not say that because my views differed from those of the attorney general, because they did not.

The CHAIRMAN. Assuming that you were correct—I think it is a great mistake for the judicial branch of the Government to make any such contest against the legislative branch—was it proper for you to indite a communication of that sort to a committee of Congress in the language that has been used in this case?

Mr. MARSHALL. I believe it was.

Mr. STERLING. The committee never tried to force production of the minutes, did it?

Mr. MARSHALL. It did. I see it is stated here that it did not. May I state the facts about that, because I know about that myself? They are all narrated in my statement, that the first day the committee arrived in New York, it started its sessions—that is, it started its sessions on Monday, which I believe was the 28th of February. On that afternoon they asked me for the minutes and you will remember what occurred. I said I would consult the Attorney General. Wednesday morning following, the 1st day of March—the 29th of February coming in there—I gave them the refusal or the instructions of the Attorney General that I should respectfully decline to produce the minutes. After that they subpœnaed my assistant, who had been in the grand jury room, conducting this investigation, and asked him for the minutes, and at the end of his testimony, they intimated to him that he had better stay around some time because they would have an interesting communication to make to him, which the papers took to be a threat to lock him up. After they got through with that, they issued subpœnaes for the two stenographers for the grand jury. I had to send for them and instruct them to respectfully decline. They asserted, and so far as I can make out, they were making every possible effort to get these minutes, and I was, as I understood it, bound to defend them tooth and nail.

Mr. STERLING. They never did arrest anybody for not producing them, did they?

Mr. MARSHALL. No. But the next man might have expected an arrest after my assistant had been warned.

The CHAIRMAN. I believe I asked you before the purpose you had in making the letter public. You wrote a second letter, in which you say that you did not intend to offend the Congress or the Judiciary Committee, "but I do not retract or modify any of those criticisms"—that is, the criticisms you made against the subcommittee.

Mr. MARSHALL. May I ask you to read it all? That is as to the methods of the subcommittee.

The CHAIRMAN. Yes; I will read it all.

> Referring to my letter of March 4, addressed to the chairman of the subcommittee, which has recently taken testimony in New York concerning my administration of my office, I notice from the press that some persons appear to have construed my statements as directed toward your honorable committee as a whole. I beg to advise you that the criticisms in that letter were addressed to the methods pursued by the subcommittee. I do not retract nor modify any of those criticisms. But I did not intend (nor do I think my letter should be so construed) to reflect in any way upon the Judiciary Committee, nor did I question the power of the House of Representatives to order such an investigation. If you and the other members of your committee for whom I have high respect, have gained the impression that my letter carried any personal reflection upon your honorable committee, it gives me pleasure to assure you that I had no such purpose.

You meant by that, did you, that you had no respect for that subcommittee? That is the inference I draw from the letter. I want to know whether or not that is what you intended?

Mr. MARSHALL. I do not think that inference ought to be drawn. I wrote that letter to Mr. Webb. I have known Mr. Webb, and I have known a number of gentlemen in Congress, for whom I have the highest respect.

The CHAIRMAN. You do not retract or modify any criticisms of the subcommittee?

Mr. MARSHALL. If you will read the whole letter——

The CHAIRMAN (interposing). I read it all. You say you have great respect for the Judiciary Committee and the House of Representatives, leaving the impression that you had none for that subcommittee.

Mr. MARSHALL. I certainly did not say that, and I did not intend to state that.

The CHAIRMAN. Mr. Marshall, you have written these two letters, and, of course, you must realize that that letter is an intensely offensive document to that subcommittee. After you have had time to reflect upon the letter and upon the whole matter and all the whole facts and circumstances connected with it, do you still want this committee to understand that you meant everything you said in those letters, and that you have no apology to make in reference to them?

Mr. MARSHALL. I do, Mr. Chairman.

The CHAIRMAN. You do?

Mr. MARSHALL. Yes, sir.

The CHAIRMAN. Understanding fully that this committee represented the House of Representatives?

Mr. MARSHALL. Yes, sir.

Mr. GARNER. Mr. Marshall, I can not get away from the unfortunate language you used in writing this letter and the statement that you filed with the committee to-day, nor from the fact that in it is conveyed the idea beyond question, to my mind, that you had in view the wisdom and the patriotism of the Congress itself in ordering this investigation against you. In glancing through this statement here, while you have been testifying—which was evidently deliberately prepared, though probably hastily, as you say, after you got your letter—I am led to the inference that you are willing to sacrifice your personal interest in the matter and everything in order to establish a precedent in the Congress and throughout the country of the fact that when a Member of Congress is indicted, if he impeaches the district attorney in the Congress, that the Congress itself ought not to pay any attention to that impeachment. Do not you intend to convey that idea?

Mr. MARSHALL. Yes.

Mr. GARNER. You do?

Mr. MARSHALL. I do not think it ought to be done—not that idea alone. I think it ought not to be done coupled with the other circumstances of this case. It ought not to be done plus the appointment of a subcommittee. I do not want you to take any one thing out of my whole picture and make it stand alone, because it is not intended to do that.

Mr. GARNER. But you do present an argument here——

Mr. MARSHALL (interrupting). Against the course of Congress——

Mr. GARNER (continuing). Going toward the policy of the House of Representatives in giving consideration to impeachment proceedings that may be filed by a sitting Member while he is under indictment in a district court of the United States.

Mr. MARSHALL. Plus turning over to him, for his——

Mr. GARNER (interrupting). You do make that proposition, which makes no difference what the charges are——

Mr. MARSHALL (interrupting). I do not think so.

Mr. GARNER (continuing). Because there can not be any higher charges against a district attorney than the fact that by the tyranny of his office he procures an indictment against citizens of the United States without any testimony whatever.

Mr. MARSHALL. I do not know of such a possibility.

Mr. GARNER. Do you know of a higher offense against society that a district attorney could perform?

Mr. MARSHALL. That is a dime-novel theory. It has not been done by anybody anywhere.

Mr. GARNER. I am not saying it was done. I am simply putting a hypothetical case to you. In this instance a Representative of Congress did impeach a district attorney and alleged in his impeachment proceedings that he had procured an indictment by tyranny and influence in his office without any evidence to sustain it. That is about as high a charge as I can conceive of against a district attorney. Your position, if I understand it correctly, is that the Congress or the House of Representatives, when those charges are made by a sitting Member who has been indicted, ought not to give them any consideration or make any investigation concerning them?

Mr. MARSHALL. No; I do not want you to tie me to that thing, leaving all of the rest of it out. I had never had any objection to an investigation of anything. But here, just before the Buchanan trial, to have this expedition brought to New York, and have this so-called investigation made, which consisted mostly of abuse and villification—sticking it all in the newspapers—what better thing could be done? What could you give a man better if he was under accusation of crime, if he could do what has been done here, and who would have prosecuted him?

Mr. GARNER. I agree with you that you have raised a very interesting problem that might be considered by the House of Representatives and might be a precedent—that a sitting Member who is under indictment ought not be permitted by the House of Representatives to file impeachment proceedings against the prosecuting officer. I want to call your attention to your statement here, in which you said to this committee to-day:

> Defense by impeachment, as I have said, is a novel defense.

Mr. MARSHALL. That is true.

Mr. GARNER. That is the act of the House of Representatives.

Mr. MARSHALL. That is perhaps where I am a little confused in my language. The language which the chairman has used here and the language that is used by the subcommittee and the language that is used all through this record is that I was what they described as "impeached" when Buchanan got up and made his speech. That is what they call impeached. He gets up and says, "I impeach the district attorney," etc. If my language is wrong, I have followed the committee's language and the language of the chairman of this committee.

Mr. GARNER. Here is your language:

> It is my unfortunate lot to take part in the first case of this character.

Mr. MARSHALL. Is not that true? This is the first time a Congressman ever did this.

Mr. GARNER. I am trying to lead up to the proposition that you are willing to make yourself a martyr in this instance in order that

the Congress of the United States may be impressed with the unwisdom, if I may use that term, of ever again considering the proposition of impeaching a prosecuting officer of a sitting Member.

Mr. MARSHALL. Or of adopting this course of conduct which has been adopted in this case—the whole case. I do not mean they could not impeach him. Suppose a man is bribed to prosecute a Congressman and the proof is brought to the Congress that he had been bribed to do it and Congress looked into it and acted carefully and made a study of it and found there was substantial evidence of it, I think a thorough and patient and temperate examination of that should be made.

Mr. GARNER. Let us see if you mean that with reference to this committee:

> At whatever discomfort to myself, it is my intention to see this case to the end. Surely the House of Representatives does not contemplate establishing the precedent that violators of criminal law—

You are not talking about the subcommittee now—

> if they happen to be Members, will find in it a "White Friar" or "Alsatia" w ich will be their sanctuary against prosecutors who seek to apply that law.

You were not speaking about the conduct of a committee at that time. You were speaking about the House of Representatives in ordering an investigation of impeachment proceedings by a sitting Member who happened to be under indictment. All through your statement and in your letter here the whole body of the House of Representatives seemed to have been in your mind. I will call your attention to your letter for a moment, in which you said:

> I said that your expedition to this town was not an investigation conducted in good faith, but was a deliberate effort to intimidate any district attorney who had the temerity to present charges against one of your honorable body.

"Your honorable body" must have referred to the House of Representatives.

Mr. MARSHALL. Yes; but it is addressed to the committee, "the expedition" of the committee "to this town."

Mr. GARNER. You knew they went under the direction of the House of Representatives, and what I want to get in my mind is whether or not you, as district attorney and a Federal officer, had such conception of the House of Representatives that they were parties to an effort to shield a criminal because he happened to be a Member of the House of Representatives.

Mr. MARSHALL. Let me say again, and make it as strong as I can, that I have no such ideas; and while, of course, you can take this statement which I have prepared here hastily and find little pieces in it that mean that, I do not think there is any of the statement that conveys the idea that you just suggested; and if there is any, it is not intended. It is a slip of some sort.

The CHAIRMAN. Your whole idea, Mr. Marshall, was to express your profound contempt for that subcommittee? That was all, was it not?

Mr. MARSHALL. Is that quite a fair question to put to me?

Mr. GARNER. I think it is due to the subcommittee to express my opinion concerning their impartiality toward you. In my candid judgment, that subcommittee was partial to you in their hearts and in their sentiments. I do not believe when they started in to inves-

tigate this matter that there was any impeachable act of yours that should be presented to the United States Senate. I do not know what their opinion is now, but that is my judgment about it, because I know these men and I have heard them express themselves, and I know their very high character and I think you had an erroneous idea in the beginning as to the character of the men and the purpose they had in view. I think another thing, if you will permit me to put it as a matter of suggestion—that you people in New York conduct too much of your business through the newspapers. Your statement here this afternoon is with reference to what the newspapers said and did, and too much of your public business is conducted through the newspapers.

Mr. MARSHALL. I agree with that fully, and I do not think any of this ought to have been in the newspapers. I think that nine Members of Congress out of ten, if they had that thing to take care of, would have conducted it just the way the proceedings of the whole committee were conducted here in Washington.

The CHAIRMAN. I asked a question a little while ago which you said you thought was not fair. I do not want to put a question that is not fair. May I put it to you in another way? The opinion that you expressed in the two letters that you wrote to the subcommittee and to the full committee on this question was your opinion and feeling against the three members of the subcommittee and not against the Judiciary Committee as a whole and not against the House? Is that what you want us to understand?

Mr. MARSHALL. The language of the whole letter explains itself. It was against the methods of the subcommittee. I do not know those gentlemen—that is, I have a slight acquaintance with Mr. Carlin only.

The CHAIRMAN. That involves the whole thing—their conduct.

Mr. MARSHALL. I would not undertake to form an opinion; it is of no importance what my opinion is.

The CHAIRMAN. Your opinion will be determined from what you wrote, of course. You meant that to be against the subcommittee and not against the House of Representatives?

Mr. MARSHALL. Against the methods of the subcommittee, if I may repeat that, because I say at the end of my statement here submitted to-day that I knew always there was nothing personal against me in this thing. These gentlemen of the subcommittee did not know me. So far as Buchanan and I are concerned, I do not think we would know if we met each other on the street. We met once 10 years ago, I believe.

The CHAIRMAN. What I want to get at is whether, in the event this committee of the House should think, from the whole proceeding, that you are in contempt of the House, you intended what you had done in stating this matter as being directed against the House and the Judiciary Committee, or whether it was merely against the subcommittee?

Mr. MARSHALL. It was not directed against the House. It was not directed against the committee. It was directed against the methods of the subcommittee only. I make that as plain as I possibly can.

The CHAIRMAN. If it should be held that the subcommittee was in effect the House of Representatives under the circumstances, acting

under its power and authority, and that whatever you did against them would be against the House, I take it you would want to apologize to the House?

Mr. MARSHALL. I can not imagine such a contingency. I would have to deal with it as a separate matter.

The CHAIRMAN. You can not imagine that the committee would hold that the subcommittee was acting for the House of Representatives and clothed with its power and authority, and that whatever indignity you offered to them was an indignity offered to the House? You say you can not imagine that?

Mr. MARSHALL. No; it is almost impossible to me. I should have to wait and deal with that when it arose.

The CHAIRMAN. I can not conceive how it is that any other opinion could be held than that a contempt of this committee would be a contempt of the House itself, because, if the House is not clothed with the power to follow its committees and protect them from intimidation and insult, then the House itself is powerless.

Mr. STERLING. That is true if the committee is proceeding under the rules of Congress and within its authority.

The CHAIRMAN. Of course, if the committee were acting ultra vires, that is another question.

Mr. LENROOT. Do you wish the committee to understand, Mr. Marshall, that you had no intention of casting any reflections upon the subcommittee or their motives, but only as to the subcommittee's methods of pursuing the investigation?

Mr. MARSHALL. Yes; my criticism was of the methods pursued by that subcommittee. I have stated that several times.

Mr. LENROOT. I know you have, but do you wish us to understand that you had no feeling against or toward the members of the subcommittee and did not wish this letter to carry any reflection upon the members of that subcommittee?

Mr. MARSHALL. The situation was this: There had been a week of successively aggravating publications in the newspapers in New York. One thing after another had been brought out. At odd times the statements of the subcommitteemen and their comments on the evidence had been brought out. There was left a public impression that would have lasted forever if I had not answered it in the forum which they chose, and I had to do what I did; I could not have done anything else. It was a necessity that I was placed under by circumstances which I did not set in motion.

Mr. STERLING. Why do you hold the committee responsible for those publications in the newspapers? They were written by reporters that were there.

Mr. MARSHALL. Yes; they were written by the reporters who were there, but the proceedings were thrown open by the subcommittee after stating, and agreeing—and in those statements that I see they have made to this committee—that that was not proper in Washington, but in New York it seems for some reason to have been proper. The Washington hearings were hearings in executive session, so all this mud and filth could not be tossed around by these people they subpœnaed. The minute the subcommittee hit New York the restrictions are removed for some reason that is not disclosed.

Mr. CRISP. Mr. Marshall, will you send to the committee with your statement some of the articles that you say appeared in the newspapers chargeable to the members of the subcommittee at which you took offense or which you think were improper?

Mr. MARSHALL. I will see if I can get them together.

Mr. STERLING. Will you also mark in this printed record of the testimony taken before that subcommittee in New York the things that you particularly complain of showing bad motives on the part of the committee?

Mr. MARSHALL. All right, sir.

The CHAIRMAN. Send us anything, Mr. Marshall, that you want to send, which you feel justifies you in your course in this matter, or which you feel is in mitigation of it in any way.

Mr. MARSHALL. I will do so, Mr. Chairman.

The CHAIRMAN. Is there anything further you wish to present at this time?

Mr. MARSHALL. No; not now, but I would like a little time to run over these statements I have.

The CHAIRMAN. There is nothing you want to send to the committee now except some explanations of that testimony?

Mr. MARSHALL. Some comments on that, and some newspaper articles which have been asked for.

The CHAIRMAN. Very well. The committee will stand adjourned, subject to the call of the chairman.

(Whereupon, at 4.30 o'clock p. m., the committee adjourned.)

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY'S OFFICE,
New York, April 12, 1916.

MY DEAR SIR: I have been under great pressure of work since my return and this is the first opportunity I have had to write to you.

On the hearing on Monday, April 10, before the select committee, of which you are chairman, I was asked by Congressman Sterling to direct his attention to some of the striking instances of offensive statements on the part of the subcommittee. He also asked me to send him some of the newspaper statements which I mentioned during my testimony. I asked the committee for leave to make such comments as I thought should be made on the testimony of the subcommittee and of Mr. Webb before the select committee, taken on April 7, 1916.

First. My time is so short that I can not make a complete statement about the offensive statements made by members of the subcommittee. I inclose, however, the copy of the testimony taken before the subcommittee in New York, with pencil marks indicating some of the most conspicuous instances of conduct of that character. While on this subject I should like to ask you and Mr. Sterling to be good enough to examine the memorandum which I have had prepared by Mr. Wood, and which I inclose herewith. The first part of the memorandum deals with Mr. Gard's explanation of his question to Mr. Anderson, in which Mr. Gard intimated that there had beena bribe paid to one of my assistants. You will recall that this was discussed at the hearing before your committee on Monday, and Mr. Sterling suggested that Mr. Gard might have gotten confused. I think Mr. Wood's memorandum completely disposes of the possibility of Mr. Gard's having been confused and demonstrates that his intimation that there had been bribery of my assistants was a deliberate effort to publicly slander my office.

It is really very hard for me to debate questions of this sort. The questions which your committee has to pass upon seem to me to be extremely important, and all of the facts ought to be undisputed and you should not be embarrassed by misleading statements and by the necessity of weighing evidence. The statements which are now made by members of the subcommittee are to the general effect that they were so extremely fair and considerate to me and my assistants when they came to New York that there was no provocation whatever for the letter which I wrote and which

is claimed to be a contempt of the House. I do not wish to argue these facts with the subcommittee. If you have any doubt about their course of conduct, which became and was a public scandal in this city, I would ask you to take some steps to satisfy yourselves on the subject. There are two important associations of lawyers in this city, one being the Association of the Bar of the City of New York, of which ex-Attorney General Wickersham is president, and the other being the New York County Lawyers' Association, the president of which is the Hon. Edgar M. Cullen, ex-chief judge of the court of appeals of this State. If you will write to these gentlemen for a report on the facts, or write to any other reputable lawyer in this city, I think you can readily satisfy yourselves as to the course of conduct of the subcommittee while they were here.

The statements by the members of the subcommittee are, of course, made by interested parties and, I suppose, the same criticism ought to be made of any statement which I make. I think you can satisfy yourselves easily and simply on this question of fact if you wish to do so by adopting the course which I have suggested and I am quite sure that either of the organizations which I have referred to, or both of them, would be glad to make to you promptly an unbiased statement of the facts.

Second. Complying with the request of Mr. Sterling, I inclose herewith some clippings from the newspapers concerning the "investigation" conducted by the subcommittee.

Third. Comments on testimony of Mr. Webb and members of the subcommittee:

(1) Mr. Webb is misinformed as to the publication of my letter of March 4, 1916, to Mr. Carlin. I took particular pains to see that the letter was not released to the press until it had been delivered to Mr. Carlin. It was not released to the press until 4 p. m. of Saturday, March 4, 1916, and it was delivered to Mr. Carlin certainly about 2.30 p. m. on that afternoon. I know nothing about the person who may have called Mr. Carlin up on the telephone, and who, as he says, refused to give his name.

(2) I shall not debate the claims made by the members of the subcommittee to the effect that the indictments against Rae Tanzer and the Slades were a wrench of the Federal jurisdiction. The indictments have been returned and the defendants are to be put on trial, and I see no reason for engaging in a discussion with the subcommittee as to the propriety of the indictments. The subcommittee has derived its information wholly from Mr. Martin Littleton, who was not examined in New York, and whose testimony I have not seen, and who was the attorney for the Slades, and from the Slades, who are under indictment, and from other interested parties. They have never done me the honor of asking me to state my views. If they wish to form their opinion in this way, they are at liberty, of course, to do so.

(3) I observe the statement made by Mr. Webb, on page 24 of the minutes of the testimony taken before the select committee, referring to the telegram of the Attorney General, "* * * when Mr. Marshall presented the telegram to the members of the subcommittee, that was the end of the grand jury minutes. They never issued subpœna duces tecum to get the minutes at all * * * they never issued a subpœna duces tecum, and when Mr. Marshall presented this telegram from the Attorney General, that was the end of it."

Mr. Webb has evidently been totally misinformed about the facts. The copy of the Attorney General's telegram was given to the subcommittee on the morning of Wednesday, March 1, the letter being physically delivered to Mr. Nelson on that morning. The delivery of the letter was by no means "the end of it." On March 2 the subcommittee subpœnaed my assistant, Mr. Raymond Sarfaty, who had been in charge of the investigation into the Buchanan case, and asked him about the grand jury proceedings. He was asked a number of questions as to what occurred in the grand jury room, which he refused to answer. He was asked (p. 202 of the printed record) whether he expected to be in New York for the next few days, "because the committee may have an interesting communication to make to you." This was obviously intended to convey a threat of punishment to my assistant, and was reported in the newspapers as a threat of punishment for contempt.

Having thus advertised the prospective fate of a witness who refused to give the grand jury minutes to the subcommittee, the subcommittee placed the two grand jury stenographers under subpœna, and intended, I suppose, to put them on the stand. I learned of the occurrence and advised both of the stenographers that they were officers of the Department of Justice, and were under my strict instructions to refuse to divulge anything that happened in the grand jury room. Mr. Webb is perhaps literally correct in stating that the subcommittee did not issue a subpœna duces tecum to get the grand jury minutes, but, if he has been informed that the subcommittee dropped the whole subject when they learned of the telegram of the Attorney General, the information is utterly inaccurate.

(4) Referring to the comments which the subcommittee make on what they described as my arrogant manner when I came before the subcommittee, I am, of course, unable to testify. I endeavored to treat the subcommittee with entire respect. I submitted, during my testimony before your committee on Monday last, a memorandum of what occurred before the subcommittee on that occasion, which is as accurate as I can make it. I had been brought before the subcommittee, not by an ordinary invitation, but was accompanied to their presence by the Sergeant at Arms of the House. I had learned that the subcommittee, in violation of the promise which I had been informed was made by Mr. Carlin to the Attorney General, had started off to pry into the secrets of the grand jury room, and under the circumstances I took the greatest care to limit the conversation to the subjects which were brought up by the members of the subcommittee. When they proposed to hand me a copy of the charges, I thought that if there had been charges formulated against me it would be wiser to have them served upon me in some formal manner, and asked that they be sent to my office. Nobody, of course, can testify about what his manner indicates to anybody else, but I am entirely sure that even under the circumstances in which the subcommittee placed me, I said nothing that was in the least degree disrespectful to the subcommittee.

(5) I note Mr. Gard's statement on page 71 of the record of your committee, "We told him that he was entirely welcome to be present at any time, either himself or by his attorney." The statement to which Mr. Gard refers was made by Mr. Carlin and was to the effect that I had not been asked to be present or represented and had preferred no request to be present or to be represented. I followed Mr. Carlin's language closely and have no doubt at all about the accuracy of my recollection.

Lastly, and in justice to my assistants and myself, who have been under attack, I wish to comment generally on the various criticisms of the conduct of my office which have been made by the subcommittee in their testimony before the select committee. There is not one single subject involved in these criticisms in regard to which I have had any opportunity at all of stating my side of the case. The investigation, if it may be so termed, has been wholly one-sided, and most of the witnesses whose testimony has been apparently accepted by the subcommittee are persons who have the strongest sort of grudge against my office. The fact that I do not take up in detail many of the statements which I observe in the stenographic minutes will not, I am sure, be construed by the select committee as an assent to the correctness of the statements which have been made to you.

I am relying on the fact that one of two things is sure to happen: Either the charges of Mr. Buchanan will fall of their own weight or else, perhaps, in the House of Representatives, or surely in the Senate, the time will come when I and my assistants will have an opportunity to present the evidence on our side of the controversy.

Very respectfully,

H. SNOWDEN MARSHALL.

Hon. JOHN A. MOON,
Chairman Select Committee of the House of Representatives, Washington, D. C.

P. S. I am addressing this letter to you because, while my answers apply to questions by the different members of your committee, I was requested on the hearing last Monday by Mr. Sterling to send my communication to you.

H. S. M.

[Memorandum for Mr. Marshall.]

I understand that Judge Moon or one of the other members of the select committee of the House told you that Mr. Gard might have thought that Mr. Anderson was my client, and had gotten me mixed up with Hershenstein when he asked Mr. Anderson the following questions:

"Mr. GARD. How much did you pay Mr. Hershenstein for his services?

"Mr. ANDERSON. What did I what?

"Mr. GARD. What did you pay Mr. Hershenstein for his services?

"Mr. ANDERSON. Up to the present I have not offered him any pay.

"Mr. GARD. That is interesting. How much do you intend to offer him?

"Mr. ANDERSON. That I intend to offer Mr. Hershenstein?

"Mr. GARD. You said, 'Up to the present I have not offered him any pay;' how much do you intend to offer him?

"Mr. ANDERSON. I do not intend to offer Mr. Hershenstein anything; he has not asked me for anything.

"Mr. GARD. We are glad to know that; you said up to the present time you had not offered him anything." (P. 253 of the record.)

There could have been no misapprehension about Mr. Anderson being my client, because Mr. Anderson had testified in answer to a question from Mr. Gard:

"Mr. GARD. Do you know anything about Mr. Wood's connection with that case?

"Mr. ANDERSON. No, sir; he had no connection through me in this case. I did not know Mr. Wood." (P. 250 of the record.)

I had testified before Mr. Anderson was called and had told the committee that I had appeared as an attorney representing the Pikes Peak Film Co. (p. 226 of the record), and that I did not know the complainants, Messrs. Anderson & Burke, and had never heard of them until several days after the complaint had been made to Mr. Hershenstein (p. 226 of the record).

In addition to this, after the committee had adjourned and Mr. Gard was asked about this question—the following appears in the New York World of March 3:

"Toward the end of Mr. Anderson's examination suddenly and sneeringly Congressman Gard asked the witness: 'How much did you offer Hershenstein?' The witness was plainly surprised and affronted. 'I have not made him any offer yet,' he replied slowly. 'That is interesting,' was the response. 'How much do you intend to offer him?' The witness replied that he had 'no intention at any time of offering any sum whatever.' After adjournment Mr. Gard was asked if there had been anything in the testimony to create an impression or suspicion that corruption had existed in the district attorney's office. 'There has been nothing of the kind,' he replied: 'the question was just a fisher.'"

I note in the statement made by the members of the subcommittee of the Judiciary Committee that in order to be fair to you the subcommittee, although Safford had been subpœnaed to appear in Washington, would not hear him because they heard he had been convicted of perjury.

The facts are that the committee was advised when Benjamin Slade was on the stand that Safford had been convicted of perjury. On page 116 of the record he was asked by Mr. Carlin:

"Safford was tried and convicted, was he not?

"Mr. SLADE. Yes, he was; the case is now before the circuit court of appeals.

"Mr. CARLIN. What was he convicted of—perjury?

"Mr. SLADE. Yes, perjury."

I also testified that Safford had been indicted and convicted of perjury. (P. 249 of the record.)

Benjamin Slade was examined on February 29, the second day of the committee's sessions, and I was examined on March 2, the fourth day of the sessions, so that it is apparent that early in the hearings the committee was advised that Safford had been convicted of perjury. The record shows that Safford was in court on Friday, March 3, when, referring to Safford, Mr. Carlin said: "It is not necessary; he is here to testify for himself." (P. 293.)

It also appears that on Saturday, March 4, Mr. Safford was called by Mr. Carlin, but he was not in the room. (P. 322.)

It would appear, therefore, that the committee was prepared to call Safford as a witness while holding sessions in New York.

CHARACTER OF SOME WITNESSES CALLED.

Simon H. Kugel, twice tried for conspiracy to conceal assets, both trials resulting in a disagreement. When Judge Learned Hand sentenced Rogal and Brass, indicted as coconspirators upon their plea of "guilty," he stated in open court that he did not intend to punish those defendants severely since the real guilty defendant had escaped.

Judge Hand was not called as a witness.

Herman H. Oppenheimer, called as a witness, was deeply involved in the Rogal & Brass bankruptcy—afterwards indicted in the Samuels bankruptcy—and who has been so far successful in delaying the trial of his case.

Benjamin Slade, whose brothers are under indictment in this district and his brother, Maxwell Slade, under indictment in the State court in Brooklyn. This witness was permitted to make statements to the committee which would not be permitted in any court in the country.

Moses W. Saxe, a partner of Simon H. Kugel, who indorsed a check of Rogal & Brass for $750 on the day before the petition in bankruptcy was filed, and who also gave money to Rogal when Rogal fled the jurisdiction to avoid service of process in the bankruptcy court. Saxe was strongly suspected of being a coconspirator with Rogal & Brass in the Kugel case.

Salic Goodman, an expressman, who was conclusively shown in the Kugel case to have handled the concealed assets and who was identified by Miss Curtis, of Phila-

delphia, and Mr. Wakefield, also of Philadelphia, as the man who had concealed the assets in warehouses in Philadelphia.

Keen & Bard—David Keen and Arthur Bard—associated in the moving-picture business, about whose conduct you are more familiar than I am.

Marie and Frank Doran, her brother, well known as a couple of cranks and chronic complainers.

Henry Siegel, who, according to his own testimony, ought to have been indicted. His character is best attested by his own testimony. At page 264, he testified that he said to the foreman of the grand jury: "You dirty son of a bitch, whoever told you I am anything like that?" The committee was offered Siegel's statement, made in the district attorney's office, but they said to Hershenstein that it "was not necessary."

Jacob Engle, retained by David Slade to represent Frank D. Safford, who admitted on the witness stand that he had furnished Safford with money in the Tombs.

Mayer Paltrowitz, who gave Safford, at the suggestion of David Slade, a position after Safford had spent several days on Long Island under an assumed name.

Aaron Feldman, brother-in-law of Simon H. Kugel, moved the concealed assets from Bridgeport and Hartford, Conn., to New Haven, Conn., changing the cases in which the goods had originally been packed, and also changing the markings on the cases. His participation in the scheme was shown beyond the shadow of a doubt.

You will note that I was examined particularly about my conduct during the Kugel trials, and that although I tendered the subcommittee the minutes of that trial, the minutes were not called for.

If the subcommittee had examined the minutes in the Kugel case they would have found the close connection between Goodman and the concealed assets, Feldman and the concealed assets, Kugel and the concealed assets, and the close connection between Oppenheimer and Kugel, and the very suspicious conduct of Saxe.

You will note also that when William Leary, the deputy clerk of the court, was called with the records in the Oppenheimer case, it was clearly shown that Oppenheimer had lied to the subcommittee; Oppenheimer was permitted to stand up while Mr. Leary was being examined to make explanations of his testimony.

You will note in my testimony and in that of Judge Swann and that of Carl Whitney, the suggestion that the grand jury minutes in the Bard & Keen matter had been submitted to the county district attorney's office. This was flatly denied by Mr. Brogan, the assistant who had charge of the matter, and also by myself.

R. B. W.

April 12, 1916.

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